87-779

Supreme Court, U.S.
FILED
OCT 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. A-154

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKLAND, et al.,

Respondent, Appellee, Defendant

Jurisdictional Statement
(amended)

Raymond Dobard
Appellant, in pro per
not represented by
counsel
1866 Alcatraz Avenue
Berkeley, California
94703, (415) 658-5344

November 1, 1987

To: Honorable Thurgood Marshall, Associate Justice of the Supreme Court of the United States.

JURISDICTIONAL STATEMENT

"Questions Presented"

1. Constitution due process laws require sufficient notice and a fair and adequate hearing be afforded property owner before his property can be demolished for its unsafe qualities. The ultimate questions presented is whether sufficient material evidence were presented, and shown to the court, by appellee, in compliance with the required Government Code section 11517(c), or the provisions of Oakland Housing Code Ordinance section H-303, or in compliance with the Fifth and Fourteenth Amendments of the U.S. Constitution, which would have verified and demonstrated that appellant Dobard was afforded an opportunity to present either oral or written argument at a "show cause" Administrative adjudicatory agency hearing, as "vested defense" PRIOR to the demolition of his two private properties for

its purported unsafe qualities?

2. Whether the demolition of the two private properties were in compliance with the provisions of the Oakland Housing Code (OHC) section H-306 (4), "Standard for Demolition," or was the demolition unwarranted and arbitrary?

3. Whether appellee presented to the court a verified "accusation," filed and served against petitioner Dobard, as a written statement of charges, specifying the inadequacies and hazards in his properties as required by (i) Oakland Housing Code section H-302; (ii) Government Code section 11503; and (iii) Government Code section 11504, that would have allowed petitioner the opportunity of a "vested defense," or the opportunity to eliminate the hazards?

4. There was material evidence presented to the court by petitioner-plaintiff, through his complaint, pleadings, and declaration, filed herein on February 4, 1985, that clearly and fully demonstrated that all noted code violations were abated in full by a valid

building permit issued by appellee and further reflect that substantial repair and alteration were was performed to the value of $140,000, that was expended in good faith reliance of the appellee issuance of the building permit. Now the ultimate question is whether there was justification or legal right for appellees to destroy these rehabilitated buildings after they were made as safe and secure as when first built by a good faith reliance on the City's issuance of the building permit which was considered a subsisting and valid contract between the parties? Was there a "vested right" involved in the permit?

5. The judgment and opinion of the U.S. Court of Appeals for the Ninth Circuit, 3/10/87, reflects on the top of page four, that petitioner failed to appear at a reinspection date at the property site on 8/9/84, and it further states that "faced with an inability to reinspect the property" the City went ahead with demolition procedures. The ultimate question is whether

a feeble excuse of (temporary) inability to inspect the interior of buildings is grounds for demolition, especially when the inspection notice was fatally defective and mailed to a wrong address?

6. Whether there was a valid and legal material showing presented to the court by appellee reflecting the public necessity for sacrificing petitioner two rehabilitated buildings, that would have endangered the health, moral, property, or well-being of the neighborhood?, or for the furtherance of a legitimate government objective?

7. Whether the demolition of petitioner's private properties utilized that method of promoting the governmental interest which was least burdensome of other rights?, or whether the demolition was commensurate to petitioner's "Economic Losses" of $140,000?

8. Whether the evidence was sufficient to justify the court's issuance of an order permitting the demolition of the buildings?, or whether a judicial determination was made of an existence of a "public nuisance" after

10/16/80, or whether the evidence was an "ex-parte" conclusion, or whether it was an abuse of discretion?

9. Whether it was an abuse of discretion for the court not to consider reasonable alternatives in lieu of order allowing destruction of the buildings, bearing in mind the substantial amount of work performed and the large sums of money expended ($140,000) for repairs and alterations and the urgent need for low-income housing for the poor and homeless, of which said housing was 80% completed and could have been easily taken over by another for the minor 20% completion?

10. Whether it was an abuse of discretion or an irregularity of the court, for U.S. District Court Judge of Northern California, John P. Vukasin, Jr., to put into effect and invoke the harsh punishment and sanction of "Dismissal with Prejudice," in this type of civil action on a struggling senior citizen property owner seeking protection and relief from the court to save his

property, bearing in mind the drastic foreclosure of rights that "Dismissal with Prejudice" effects?

11. Whether it was abuse of discretion or an irregularity of the court for Judge John P. Vukasin, Jr., to deny petitioner's timely and proper disqualification motion, when Judge Vukasin was fully aware that his brother, Mr. George Vukasin, was an officer of the adverse party, City of Oakland, and which requires by 28 USCS 455(b)(5)(1), that a sitting judge to recuse himself when a relative is an officer or director or trustee of a party?

12. Whether it was an abuse of discretion, or was it excess of his jurisdiction, for Judge Vukasin to deny petitioner's timely and proper disqualification motion of bias and prejudice, pursuant to 28 USCS 455(a), and continuing to make sua sponte prejudicial rulings and orders, aimed at destroying petitioner's properties, meanwhile discretionally delaying his recusal hearing until after demolition? Was it proper judicial procedure

for Judge Vukasin to sit, preside, rule, and make a judicial determination on his own recusal competency, with the main issues being racially biased and prejudiced against black United States citizens, and impartiality due to his brother being an officer of the adverse party?

13. Whether it was an abuse of discretion, or a fraudulent concealment of material evidence for appellee to not fully disclose to the court the material evidence that all the code violations had been abated and eliminated by proper repairs and alterations especially when this concealment caused legal injury and damage to petitioner?

14. Whether there was a judicial irregularity, a misapplication of justice, neglect, or inadvertence, for the Court of Appeals of the Ninth Circuit to wholly "confirm" the "Dismissal with Prejudice" decisions of Judge John P. Vukasin, Jr., and adding nothing except "affirmed," bearing in mind that this harsh punishment sanction of "Dismissal with Prejudice" should only be

invoked in extreme circumstances and not as in this instant property owner's case, seeking protection and relief from the courts?

Dated: 7-1-87

Respectfully submitted,

Raymond Dobard

Raymond Dobard
Appellant, in pro per
not represented by
counsel
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List of Parties

To: Honorable Thurgood Marshall, Associate Justice of the Supreme Court of the United States.

JURISDICTIONAL STATEMENT

List of Parties

In addition to the party named in the caption, the other parties to the proceedings below are:

A. City of Oakland:

1. Mr. Julius F. Thomas, Housing Division Official and Secretary to the Housing Advisory and Appeals Board.

2. Mr. James A. Blyer, Housing Division Official.

3. Mr. Gary Groves, Housing Division Official.

4. Mr. Roy S. Schweyer, Housing Division Official.

5. Ms. Eloise Rubin, Housing Division Official.

6. All Directors of the Housing Advisory and Appeals Board.

7. Mr. Henry Gardner, City Manager.

8. Mr. George Vukasin, the brother of Judge John P. Vukasin, Jr., who was elected to the Oakland Alameda County Coliseum. He is President of the Board of Directors. The Coliseum is owned by the City of Oakland.

9. United States District Court Northern District of California:

10. Judge John P. Vukasin, Jr., Appointed to the Superior Court of Alameda County by Governor Ronald Reagan on September 25, 1974, and appointed to the United States District Court Northern District of California by President Ronald Reagan on September 25, 1983.

Dated: 9-1-87

Respectfully submitted,

Raymond Dobard

Raymond Dobard

Raymond Dobard
Appellant, in pro per
not represented by
counsel
1866 Alcatraz Avenue
Berkeley, California
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Preliminary

The gravamen and substance of this cause of action is that the erroneous finding of the court that, "the properties were still a public nuisance despite some progress in rehabilitation," is contrary to the evidence. The evidence was insufficient to justify order for destruction of appellant's two valuable buildings, after all the code violations and hazardous substandard conditions had been eliminated, by proper repairs and alterations, that transformed the substandard structures to standard structures, that were as safe and secure as when first built. Appellant draws this Honorable Court's attention to Exhibits A, B, C, C-1, and D-1 (separately bound in Appendix) that reflects as follows: (i) all the list of public nuisance conditions -- code violations that are noted in Exhibit"A,"

dated March 20, 1975 (the only statement of issue herein) -- were fully abated and cured. (ii) This abatement was the result of acquiring building permits as reflected in Exhibit "B," which in is conjunction with (iii) substantial repairs and alteration work performed that are fully acknowledged by appellee, City of Oakland, as reflected in Exhibit "C," dated October 16, 1980. Appellant expended a large sum of money on this abatement, repairs, and alteration work, to a value of $140,000. This substantial work progress is supported by Exhibit "C-1," fifteen pages of photos before the list of code violations (Exhibit "A") were abated, and after they were abated, that transformed the structures from substandard to standard and safe. Appellant further draws this Honorable Court's attention to Exhibit D-1, dated September 12, 1980, a certified mail addressed to Mr. Julius Thomas, of appellee City of Oakland, informing him that all the list of code violations dated March 20, 1975,

were repaired and corrected and further requesting that these structures be removed from your Sub-Standard Housing list. There was no reply to this certified letter by Mr. Julius Thomas and thus appellant was led to believe that the cured and abated list of violations of March 20, 1975, were put to rest and no longer an issue. (All exhibits are attached as separately bound appendices herewith.)

Now the trial court and the court of appeals are being "induced" by appellees (five years later) for unverified findings relative to unsubstantiated inadequacies that were not presented to the court as a statement of issue relative to purported code violations and substandard public nuisance conditions. There was no new accusation specifying inadequacies within appellant's buildings, nor shown to either the trial or court of appeals, nor filed and served against appellant as a new statement of issue after October 16, 1980.

Fraudulent Concealment of Material Evidence: Violation of Procedural Due Process and Rights

Appellant informs this Honorable Court that the intentional perversion of truth by appellees to conceal and suppress material evidence regarding the abating and remedying of the list of violations of Exhibit "A," which it had both a legal and moral obligation to disclose, was an unwarranted and arbitrary interference with appellant's constitutional rights to carry on a lawful apartment rental business, to make contract, or to use and enjoy property. This fraudulent concealment act was performed by appellees under the guise of enforcing police regulations that further resulted in the arbitrary destruction of appellant's valuable properties at an "economic loss" of $140,000. Appellant further informs this Honorable Court that the curing and abating of the list of violations dated March 20, 1975, as depicted in Exhibit "A," by proper repairs

and alterations and the expending of large sums of money on such, were the legal means by which appellant right was enforced, or the violation of his right prevented, redressed, or compensated and thus appellee's fraudulent concealment of abatement evidence caused appellant to surrender a right, and deprived him of procedural "due process" that was guaranteed and fully protected by the Fifth and Fourteenth Amendments of the United States Constitution. Both the trial court and the court of appeals abused discretion by rendering a determination and finding based on incomplete factual evidence before it regarding the abatement of the list of code violations of March 20, 1975, which was the statement of issue herein that gave rise to the substandard/public nuisance hazardous conditions, which were fully eliminated by repairs and alterations, and thus the destruction of appellant's properties were (i) unwarranted; (ii) for no public purpose; (iii) without just compensation; (iv) arbi-

trary; and (v) without a judicial determination.

In closing this Preliminary, appellant reminds this Honorable Court that "where one has full information, as appellees, and represent he has, if he discloses a part only, and by word or conduct leads another to believe that he has made a full disclosure, and does this with intent to deceive and to prevent inquiry, he is guilt of fraud against which equity will relieve, if his words and conduct, through reliance on them, bring about the result which he desires.

(End of Preliminary)

JURISDICTIONAL STATEMENT

Appellant Raymond Dobard, a disabled black senior citizen, appearing herein and all throughout this litigation in propria persona and without legal counsel, nor legal training, appeals from the judgment entered by the United States Court of Appeals for the Ninth Circuit on March 10, 1987, rehearing denied by final order dated June 5, 1987; affirming the Summary Judgment -- "Dismissal With Prejudice" order of the United States District Court for the Northern District of California dated September 30, 1985. A notice of appeal to this court was filed on August 26, 1987 with the Clerk of the United States Court of Appeals for the Ninth Circuit. This appeal is taken pursuant to 28 U.S.C. 1254 (2), which authorizes a direct appeal to this court from a final judgment of a federal court of appeals where the appeal to the Supreme Court is taken by a party relying on a State statute repugnant to the Constitution, or laws of the United States.

The nature of this proceeding is an action to redress: the protection of equal rights under the law (42 USC 1981); the protection of property rights of citizens (42 USC 1982); the protection against the deprivation of rights under"color of law" (42 USC 1983); against conspiracies to interfere with civil rights (42 USC 1985); and discrimination prohibited in federal financial assistance programs (42 USC 2000 a., et seq.).

A. This case involves an arbitrary interference with property rights, under the guise of enforcing police regulations which cannot be justified as an exercise of police power, results from due process clauses that sufficient notice and a fair and adequate hearing be given a property owner before his property can be demolished because of its unhealthy or dangerous qualities. Property rights are fully protected by the United States Constitution of the Fifth and Fourteenth Amendments. Procedural due process protection, i.e., in guaranteeing procedural

fairness where the government would deprive one of his property or liberty. This requires that notice and the right to a fair hearing be accorded prior to a deprivation. 237 U.S. 309. The extent to which procedural due process must be afforded a person is influenced by the extent to which he may be "condemned to suffer grievous loss ... and depends upon whether the (person's) interest in avoiding that loss outweighs the governmental interest in summary adjudication. This portion of the "due process" statement of the case contains the facts material to consideration of the "questions presented" in paragraphs (1), (5), and (8).

B. This case further involves a deprivation of rights to carry on a lawful apartment rental business, to make contracts, or to use and enjoy property. This lawful apartment rental business was arbitrarily terminated by the demolition and destruction of these private properties, under the guise of public nuisance, that failed to utilize

that method of promoting the governmental interest which was least burdensome of other rights, especially when all the hazards were fully abated and eliminated by proper and valid repairs and alterations to the buildings that made them safe and secure as when first built. The facts material to consideration of the "questions presented" regarding the deprivation of property rights and the arbitrary and unwarranted destruction of the properties are in paragraphs (2), (4), (6), (7), (8), and (9).

C. This case further involves: (i) a conspiracy to interfere with appellant's civil rights; (ii) a conspiracy to effect a legal purpose with corrupt intent; or by improper means; (iii) in concert and conspiracy, to deprive appellant of his federally protected rights and opportunity of being heard at two administrative adjudicatory hearings, where rulings and decisions were being made relative to the demolition and destruction of his properties which deprived

appellant of a "vested defense"; (iv) the fraudulent concealment and suppressing of material evidence, regarding the abatement and remedy of substandard and public nuisance conditions of buildings, caused appellant legal injuries and damages; and arbitrarily forced him to surrender a right of defense. The facts material to consideration of the "questions presented" can be found in paragraphs (1), (2), (3), (4), (6), and (13).

D. This case further involves a breach of a "vested right" in a building permit issued in good faith and granted by appellee City of Oakland to abate the code violations, of which were fully eliminated by a substantial amount of repair and alteration work performed, and by a large sum of money expended on repairs ($140,000 in value) which were expended in good faith reliance on the building permit issued and granted by the Housing division of the City of Oakland. The facts material to consideration of the "questions presented" regarding appellant's

"vested right" in the building permit (that was at no time ever cancelled by appellees) and subsequent adoption of demolition will not affect such property so as to preclude completion or modification of the project for which the permit was issued, can be found in paragraph (4).

E. This case is deeply rooted with city politics, whereas the brother of the sitting judge has been an officer of the adverse party, appellee City of Oakland since 1980, for the past seven years consistently and presently is the president of the board of directors of the Oakland Alameda County Coliseum, which is owned by the City of Oakland. Mr. George Vukasin, the brother of Judge John P. Vukasin, Jr., was a former city councilman of adverse party, City of Oakland, from 1976 to 1980. Mr. George Vukasin, with his delegated powers as an officer of the City of Oakland, entered a memorandum of agreement dated 9/17/85, to loan the Oakland Athletics baseball company $15,000,000 of

public funds that was ratified and paid by the Oakland City Council by its resolution No. 63970 C.M.S., dated 7/15/86. The opinion No. 86-502, dated 4/1/87, of the California Attorney General, John K. Van De Kamp, declared and found that Mr. George Vukasin and his Coliseum board of directors to be a corporate body which has been delegated powers of a legislative body of a local agency, the City of Oakland and County of Alameda, pursuant to Government Code section 54952.2. The facts material to consideration of the "questions presented" regarding the denial of appellant's motion for disqualification of Judge JOhn P. Vukasin, Jr., can be found in paragraphs (10), (11), and (12).

F. The recused and disqualification questions of Judge John P. Vukasin, Jr., was first raised when the very first document of this case was filed on February 11, 1985 as the motion to disqualify Judge pursuant to the federal statute 28 USCS 455(a), "where impartiality may be reasonably questioned,

with supportive affidavit of prejudice to disqualify judge as the companion document of same date, February 11, 1985. The recusal hearing was delayed on two occasions and until after appellant's properties were allowed to be demolished and destroyed by sua sponte orders of Judge Vukasin and subsequent summary judgment in favor of defendant and the harsh sanction of "Dismissed with Prejudice."

G. The reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution are as follows:

1. For the promoting of the General Interest of Justice.

2. To prevent the exercising of police power by a municipality in an oppressive or arbitrary manner, or discriminate against a class or an individual, under the guise of enforcement of an ordinance.

3. To prevent an arbitrary interference

with property rights protected by the Fourteenth Amendment of the United States Constitution.

4. To prevent the frustration of the orderly development of private properties after substantial work was performed and a large sum of money expended for repairs and alterations.

5. To compel full disclosure of abated and remedied conditions of a building that is being affected by demolition.

6. To prevent the deprivation of property, without due process of law.

H. The opinion of the United States Court of Appeals for the Ninth Circuit dated March 10, 1987, and the rehearing denial by order dated June 5, 1987, are not reported and are set forth in an appendix which is filed herewith as a separate document.

Companion Case I: Is raising similar substantive questions as this appeal, was previously before this court as Caroline W. Dobbins, plaintiff in error v. City of Los

Angeles, 25 Supreme Court 18-23, October term 1904. This statement by Justice Day: stated that plaintiff Dobbins purchased land to erect, construct and maintain gasworks in the City of Los Angeles. Plaintiff Dobbins made application to the City of Los Angeles for a permit to construct and erect her gas works. That permit was granted by the City of Los Angeles. After the permit was granted and issued construction work began for the erection of the gas works. After the foundation was constructed at a cost of upward of $2,500, and nearly completed, the City Council passed an ordinance frustrating the completion of construction work. Plaintiff Dobbins relying upon the protection of the 14th Amendment to the Constitution of the United States prayed that the permit granted

by the City of Los Angeles be declared to be valid and subsisting contract between the city of Los Angeles and herself and that all ordinances passed by the City Council in contravention thereof be declared void; that

the defendant be enjoined from enforcing said ordinances against the plaintiff, from delaying or interfering with the action of the plaintiff in the construction and erecting said works, from interfering with the maintenance and operation of same, and for genera relief.

Mr. Justice Day delivered the opinion of the court:

The "question presented" involves the right of the plaintiff to invoke the protection of the Fourteenth Amendment against alleged infraction of her rights by the action of the City Council in passing and enforcing the ordinances which prevent the carrying on of the business of making and selling gas to the people of the city.

The judgment is reversed, and the case remanded to the court for further proceedings. The relationship of this case to appellant's is that (i) a building permit was issued by the municipality appellees of each; (ii) substantial work and large sums of money

were expended on repairs and construction in reliance on the building permit issued by the City. (iii) Both projects were ordered "shut down" by the appellee's city. (iv) Both building permits were construed to be valid subsisting contracts binding on all parties, with acquired vested interest that precludes demolition. (v) Both cases invoke protection of 14th Amendment for the infraction of rights.

Companion Case II: It has also been established doctrine at least since Justice Holmes' opinion for the court in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) that "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without

such formal proceedings.

The relationship of this case to appellant is that appellees went passed the limits of police power regulation and went into the area of infringement on Constitutional rights when appellees demolished appellant's remedied and abated structures after all hazards were eliminated and the structures were as safe and secure as when first built.

Companion Case III: First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, Supreme Court opinion No. 85-1199, dated June 9, 1987. In this cause of action the County of Los Angeles took immediate steps to exercise its police regulation power to deny Lutheran Church the right to develop structures on its land because the county determined that it was required for the immediate preservation of the "Public Health and Safety."

Chief Justice Rehnquist delivered the opinion of the Supreme Court that stated

governmental action that even temporarily denies landowner all use of land so as to be considered "taking" of property within meaning of Fifth Amendment's Just Compensation Clause requires government to pay landowner value of use for period during which use is denied, even though such requirement lessens government's freedom and flexibility when enacting land-use regulation, case is remanded.

This case relates to appellant's case because appellant was denied the right to develop structures on his land, under the guise of enforcing police regulations by appellees for the alleged and purported preservation of "Public Health and Safety," whereas appellant had abated all code violations and eliminated all hazardous public nuisance conditions and the structures were as safe and secure as when first built.

Companion Case IV: Nollan v. The California Coastal Commission, United States Supreme Court No. 86-133. Justice Antonin

Scalia said for the court that government officials may not casually force property owners to meet extreme conditions in building on their land. Justice Scalia further said that conditions imposed on landowners must be closely linked tc a legitimate government purpose.

The relationship of this case to appellant's is that appellees wrongfully demolished appellant's properties under extreme conditions and not due to health and safety. Appellant refers this Honorable Court to Exhibit B-B, the City of Oakland interoffice letter dated February 26, 1985, that clearly states and admits those extreme conditions as follows: (i) Expected full rehabilitation of two buildings within 120 days, that are within the poorer neighborhood of the City of Oakland,here no bank or lending institution will grant or guarantee any loan to any person to rehabilitate a building within this "Designated Area," and the 120 days statement was made in duress;

(ii) Appellees informed and led appellant to believe that due to the involved code violations contained in the buildings appellant would receive Federal financial assistance on a priority basis for abating and curing code violations. This financial assistance was not forthcoming because appellees deprived appellant from participating in the federal loan program that was being administered by appellees; (iii) appellees alleged "slow progress" over two years by their observation. However, appellant draws to this Honorable Court's attention Exhibit "C" and C-1, dated October 16, 1980, an acknowledgement work progress report where appellee's housing division official admits substantial progress has been made; (iv) another extreme condition was appellee's false statement that appellant did not allow staff to reinspect the interior of the property and thus staff proceeded to the next step in the process, demolition. Appellant states to this court that (temporary) inability to re-inspect the

interior of the property is not a standard for demolition in the Oakland Housing Code Ordinance, and therefore appellee's demolition on this pretext is considered Extreme Conditions on the part of appellees; (v) Further evidence of appellees compelling appellant to comply with their "overreaching" as an extreme condition is stated by appellees in its writing of, "Due to the "extensive time" which had passed on this case, the staff, with advice of the City Attorney, proceeded with the demolition despite the extension request. Appellant again states to this Honorable Court that appellees must follow the rules and regulations of its Oakland Housing Code Ordinance, and "Extensive Time" is not standard for demolition. Therefore the relationship that exists is that appellees are overreaching and attempting to compel appellant to reach extreme and oppressive conditions that are not closely linked to a legitimate government purpose.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provisions; statutes, ordinances, and regulations that the case involves are lengthy and their citations are described below and their pertinent texts are set forth in separately bound appendix.

Citations: United States Constitution, Fifth and Fourteenth Amendments; 42 USC 1981, 1982, 1983, 1985, and 2000; 28 USCS 455(a) and 455(b)(5)(i); the Oakland Housing Code Ordinance No. 8549 C.M.S.; Government Code section 11509, 11516, and 11517, § 54950 et seq.

CONCLUSION

In closing appellant believes that the Court of Appeals for the Ninth Circuit abused discretion and erred by its judgment and opinion dated 3/10/87 because the findings were contrary to the law, the facts, and the evidence.

a. The court's findings averred, on page 1, that Mr. George Vukasin, Judge Vukasin's brother, is president of the

Oakland Coliseum Board. The Coliseum Board is completely independent from the adverse party City of Oakland. Appellant refutes this by stating that the official municipal acts and course of conduct of Mr. George Vukasin, with his legislative authority of performing the business of the City having his foundation in public policy by his implementing and affixing his signature to the document of the memorandum of agreement document, dated September 17, 1985, between the Oakland-Alameda County Coliseum, Inc., a non-profit corporation, and the Oakland Athletic Baseball Company, for the making of a $15,000,000 loan of public funds, that was ratified and paid by the Oakland City Council by its resolution no. 63970 C.M.S, dated 7/26/86, is sufficient evidence to clearly demonstrate that Mr. George Vukasin is an officer, or director of the City of Oakland engaged in doing its business and is not completely independent from the City as averred by the erroneous affirmation findings

of the Court of Appeals for the Ninth Circuit. Therefore, Judge Vukasin, the trial court's sitting judge, should have granted appellant's timely motion of disqualification and recuse his self, pursuant to 28 USCS section 455(b)(1), where a sitting judge has an immediate family member as an officer or director of the adverse party, or pursuant to 28 USCS section 455(a), where impartiality might be reasonably questioned.

b. There was no direct documented connection shown to the court by appellees to justify appellees' enforcing its policy regulation of demolition on appellant Dobard's rehabilitated properties for the "unrelated" acts and course of conduct of the former property owners. Appellant states that the findings of the court on 3/10/87 relative to the acts, conduct, or condition of the buildings when under the control of the former owners, and nearly ten years prior to filing this lawsuit, during the periods of April 22, 1975, or August 18, 1977, is not directly

connected to appellant and is completely and clearly "unrelated" to him by law (see Govt. Code §11506(3)), whereas appellant objects to the form of accusation on the grounds that it is so indefinitely or uncertain that appellant cannot identify the transaction or prepare his defense. Appellant states he is not responsible for the acts and conduct in 1975 of the former owners of his property. There was no accusation filed and served against appellant by appellees in 1975 or 1977 as a statement of issue to respond to. (See Govt. Code §§ 11503 and 11504)

c. There was no verified documented evidence presented to the court of appeals to justify demolition of appellant's private properties as required by Oakland Housing Code Ordinance (O.H.C.) Section H-302 (1) and (2), for determining whether the specified inadequacies or hazards were corrected and eliminated prior to the issuance of the arbitrary order of demolition. There was no judicial determination made on a presently

existing public nuisance, except "hearsay."

d. There was no verified documented evidence presented to the court, except "hearsay," that demonstrated appellant was given sufficient due process notice, for an opportunity to be heard and to rebut the testimony of appellee's housing division officials regarding alleged public nuisance violations, during the two adjudicatory hearings held before the H.A.A.B. tribunal on Septemper 6, and October 4, 1984, where two decisions were being made for demolishing appellant's private properties for its alleged unsafe conditions. Such testimony by said officials are construed to be ex-parte evidence and cannot be used to uphold an administrative ruling. (Desert Turf Club v. Bd of Spvrs, 141 Cal.2d 446, 296 P.2d 882).

e. On page 5 of the Court of Appeals' judgment and opinion of 3/10/87, the court alludes to the 120-day privilege allowed by appellees from August 13, 1979, for rehabilitating his properties. Appellant states that

a right is not a privilege nor a bargaining chip and the 120-day unilateral duress allegation was intended exclusively to regulate the elimination of the hazards as reflected in the list of violations dated 3/20/75. The 120-day unilateral duress allegation imposed by appellees is construed to be compelling appellant to meet "extreme conditions" that are not applied by appellees to other property owners repairing or rehabilitating their properties. Thus the duress 120 days is an "extreme condition" applied by appellees and thus void and a nullity. Furthermore, the 120-day "duress" allegation of 8/13/79 was seasonably waived (after six years) by Rule 12H(1), defense and objections, and statute of limitation.

In the interest of Justice appellant prays for plenary consideration in appealing to the Honorable Supreme Court of the United States of America.

Dated: 11/1/87

Raymond Dobard

Raymond Dobard, Appellant
in pro per not represented by counsel

FILED
OCT 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. A-154

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Petitioner, Appellant, Plaintiff

vs.

CITY OF OAKLAND, et al.,

Respondent, Appellee, Defendant

Appendices to Jurisdictional Statement
(amended)

Raymond Dobard
Appellant, in pro per
not represented by
counsel
1866 Alcatraz Avenue
Berkeley, California
94703, (415) 658-5344

November 1, 1987

FILED
Supreme Court U.S.
OCT 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

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Filed

August 26, 1987

Cathy A. Catterson, Clerk

In the United States Court of Appeals for the Ninth Circuit

Raymond Dobard

Appellant C.A. No. 85-2715

vs. D.C. No. C85-1359 JPV

City of Oakland, et al.

Appelleee

Notice of Appeal to the Supreme Court of the United States

To: Honorable Thurgood Marshall, Associate Justice of the Supreme Court of the United States.

Notice is hereby given, that Raymond Dobard, the appellant in this case, hereby appeals to the Supreme Court of the United States from the Judgment of the United States Court of Appeals for the Ninth Circuit, dated March 10, 1987, rehearing denied by order dated June 5, 1987; affirming the summary

-/-

judgment-dismissal with prejudice order of the United States District Court for the Northern District of California dated Sept. 30, 1985.

This appeal is taken pursuant to 28 U.S.C. 1254(2).

Dated: Aug. 17, 1987.

Raymond Dobard

s/Raymond Dobard, Appellant pro se and not represented by counsel

Not for Publication

Filed

June 5, 1987

Cathy A. Catterson, Clerk

In the United States Court of Appeals for the Ninth Circuit

Raymond Dobard

Appellant

vs.

City of Oakland, et al.

Appellees

C.A. No. 85-2715

D.C. No. 85-1359 JPV

ORDER

Appeal from the United States District Court for the Northern District of California

Before: Wallace, Poole, and Wiggins, Circuit Judges

The panel as constituted above has voted to reject the suggestion for rehearing en banc.

The full court has been advised by the suggestion for rehearing en banc, and no judge of the Court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The suggestion for rehearing en banc is rejected.

FILED
MARCH 10, 1987

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND DOBARD, Plaintiff-Appellant, vs. CITY OF OAKLAND and DOES 2 THROUGH 99, Defendants-Appellees.	)	No. 85-2715 D.C. No. 85-1359 JPV MEMORANDUM

Appeal from the United States District Court for the Northern District of California.

John P. Vukasin, Jr., District Judge, Presiding. Argued and Submitted December 8, 1986, San Francisco, California.

Before: WALLACE, POOLE, and WIGGINS, Circuit Judges.

Dobard appeals a ruling by the district court judge refusing to recuse himself from the case and granting Oakland's motion for

summary judgment on Dobard's constitutional and civil rights claims. We have jurisdiction pursuant to 28 U.S.C. § 1921, and we affirm.

Dobard argues that District Court Judge Vukasin should have recused himself pursuant to 28 U.S.C. § 455a because his brother has close professional ties with the City and because the judge is racially biased. Regardless of what standard of review we apply this claim will fail. George Vukasin, Judge Vukasin's brother, is president of the Oakland Coliseum Board. The Coliseum Board is completely independent from the City. George Vukasin's position alone does not raise any question of prejudice on the part of the judge. See United States v. Olander, 584 F.2d 876, 882 (9th Cir. 1978) (section 455(a) does not require recusal absent a direct personal bias against a party).

George Vukasin formerly served on Oakland's City Council, but this does not raise any grounds for disqualification. Section 455(b)(5)(i) requires a sitting judge

to recuse himself when a relative "(i)s a party to the proceeding, or an officer, director, or trustee of a party" (emphasis added). The uncontroverted evidence shows that Mr. Vukasin had not been a member of the City Council for over six years prior to the district court's decision in this case. The statute does not require recusal in this kind of situation.

Finally, the affidavits submitted by Dobard alleging that Judge Vukasin is racially biased are insufficient to support a motion to recuse. The allegations made in these affidavits are entirely unsubstantiated. A motion to recuse must be based on more than rumors and conjecture.

Dobard also appeals the district court granting summary judgment in favor of Oakland. We review the entry of summary judgment de novo. Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cr. 1986). In his complaint, Dobard alleges violation of 42 U.S.C. §§ 1981, 1982, 1983, 1985, and 2000(e), the fourteenth amendment's due process and equal

protection clauses, and the thirteenth amendment. While Dobard's briefs are far from clear, his primary allegation appears to be that he was denied his right to procedural due process because the City did not give him a hearing prior to demolishing his substandard rental property.

Before demolishing property the City is required by ordinance to go through a several-stage process. First, a housing division official must find the property unsafe or substandard, and send notice of that finding to the property owner. Dobard's property was initially found substandard, and notice was given, on April 22, 1975. Next, a hearing must be held before the Housing Advisory and Appeals Board (HAAB) to determine whether the substandard property is dangerous or a public nuisance. Here, that hearing was held on August 18, 1977. The HAAB found unanimously that the property was a public nuisance, and that it should be demolished.

The property was transferred to Dobard soon after the demolition hearing. Instead

of proceeding with the demolition, which the City had every right to do, the City decided to give Dobard 120 days from August 13, 1979, to rehabilitate the property. The original demolition order was not rescinded, but rather "held in abeyance." On October 2, 1980, the property was reinspected by Julius Thomas, assistant housing manager, who found that the property was still a public nuisance despite some progress in rehabilitation. Even though the previous demolition order was still in effect, the City again agreed to hold the demolition in abeyance pending completion of the repairs.

Between October 2, 1980, and February 26, 1985, the housing officials made numerous attempts to reinspect the property. Mr. Dobard failed to appear at any of the scheduled inspections. Faced with an inability to reinspect the property, the City went ahead with demolition procedures.

On September 6 and October 4, 1984, the Board held two hearings in which it reaffirmed its previous order to demolish. Mr.

Dobard did not attend either of these hearings. The City subsequently sent Dobard 90 and 30 day demolition notices. On February 26, 1985, Dobard was given another chance to defend the condition of his property at a City Council meeting. Prior to that meeting, Dobard again refused to let City inspectors inspect the property. Because there was no new evidence to present on the condition of the property, the council took no action.

Based on our review of the record, we conclude that Dobard received all the process he was due. The City followed proper procedures when it first declared the property substandard and worthy of demolition. Moreover, the City gave Dobard ample opportunity to rehabilitate the property. There is no evidence in the record that Dobard succeeded in rehabilitation, despite being given over six years to do so. In fact, the record shows quite the opposite. In his final letter to the HAAB, dated January 13, 1985, Dobard sought a 90-day extension of final demolition so that he could "seek financial

assistance to perform additional rehabilitation work." Dobard has not raised any material issues of fact to support his claims that the City violated his due process rights or that demolition of his substandard property was unwarranted. Summary judgment on this issue was appropriate.

Dobard has failed to allege or otherwise demonstrate the requisite racial animosity to support his other civil rights claims. Summary judgment on these issues was appropriate.

AFFIRMED.

Note: This disposition is not appropriate for publication and may not be cited to or by the Courts of his Circuit except as provided by Ninth Circuit Rule 21.

Original Filed
Oct. 23, 1985
William L. Whittaker,
Clerk, U.S. District
Court, San Francisco

United States District Court for
the Northern District of California

Raymond Dobard
Plaintiff

vs.

City of Oakland, et al.
Defendants

Civil Action No.
C 85-1359 JPV

Notice of Appeal

To Defendant City of Oakland

Notice is hereby given appealing the order of Honorable J.P. Vukasin, Jr. dismissing the above entitled action with prejudice, entered on September 30, 1985.

Dated: Oct. 23, 1985.

s/ Raymond Dobard, Plaintiff

FILED
SEPT. 30, 1985

WILLIAM L. WHITTAKER, CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, vs. CITY OF OAKLAND, et al., Defendants.	No. C-85-1359 JPV ORDER DISMISSING DOES AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

ENTERED IN CIVIL DOCKETS 10/3/85

Plaintiff filed his complaint in the above-captioned action on February 4, 1985, naming as defendants the City of Oakland and ninety-eight Does. On July 11, 1985, defendant City of Oakland filed, and duly noticed for hearing on August 8, 1985, its motion for summary judgment. Plaintiff failed to file any opposition thereto within the time limits mandated by Local Rule 220-3. At the hearing, however, plaintiff appeared to argue in opposition to the motion; his arguments went

less to the merits than to his insistence that he had never received proper service of the motion and supporting papers.

On August 23, 1985, this Court issue its order enlarging the time in which plaintiff might file a written opposition to the motion for summary judgment. This Order further directed that the matter be deemed submitted on the papers as of September 19, 1985. On September 12, 1985, plaintiff filed a document entitled "Memorandum of Points and Authority in Opposition to Motion to Dismiss." Defendant's reply brief in support of its motion for summary judgment was filed on September 19, 1985.

Having considered the moving papers and reviewed the entirety of the somewhat convoluted record in this matter, the Court is of the opinion that plaintiff's complaint does not, and cannot, state a claim for relief. It is the further opinion of the Court that plaintiff's "Opposition to Motion to Dismiss" (sic) fails to demonstrate that there exists, within the meaning of Rule 56 of the Federal

Rules of Civil Procedure, a genuine issue of material fact sufficient to defeat defendant's motion for summary judgment. The Court additionally finds that the Doe defendants named in the complaint are wholly fictitious, and that no cause of action has been, or can be, stated against them.

In view of which, and good cause appearing,

IT IS HEREBY ORDERED:

(1) That the Doe defendants are DISMISSED from this action upon the Court's own motion; and

(2) That defendant City of Oakland's motion for summary judgment is hereby GRANTED.

Dated: Sept. 30, 1985

/s/ J. P. Vukasin, Jr., Judge
United States District Court

Exhibit 13-JD

FILED
SEPT. 30, 1985
WILLIAM L. WHITTAKER, CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, vs. CITY OF OAKLAND and DOES 2 through 99, Defendants.	No. C-85-1359 JPV JUDGMENT

ENTERED IN CIVIL DOCKETS 10/3/85

In accordance with the previously rendered Order Dismissing Does and Granting Defendant's Motion for Summary Judgment, it is hereby

ORDER, ADJUDGED and DECREED that the above-referenced action be, and is, DISMISSED with prejudice.

Dated:

/s/ J. P. Vukasin, Jr., Judge

United States District Court

Exhibit 8-1

FILED FEB 13, 1985
WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT
COURT, NO. DIST. OF CA

RAYMOND DOBARD
1866 Alcatraz Ave.
Berkeley, CA 94703
(415) 658-5344
Plaintiff in Pro Persona

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, v. CITY OF OAKLAND AND DOES 2 THROUGH 99, Defendants.	CIVIL ACTION NO. C 85-1359 JPV MOTION TO DISQUALIFY JUDGE (28 USCS 455 (a) JURY TRIAL DEMANDED

Now comes Raymond Dobard, the plaintiff in the above entitled action and moves the court for an order disqualifying the

Honorable J.P. Vukasin, Jr., presiding judge of the court, from hearing the aforesaid cause on the ground that his prejudice in favor of defendant precludes plaintiff from obtaining a fair and impartial trial.

Pursuant to 28 USCS 455 (a), an affivavit of movant, factually establishing the prejudice alleged herein is attached hereto, marked Exhibit No. 8, and made a part hereof. (cite 10 ALR 2d 1307)

This is the first and only such motion made by plaintiff in this action.

Dated: Feb. 11, 1985

/s/ Raymond Dobard, Plaintiff

Exhibit No. 8

RAYMOND DOBARD
1866 Alcatraz Ave.
Berkeley, CA 94703
(415) 658-5344
Plaintiff in Pro Persona

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, v. CITY OF OAKLAND AND DOES 2 THROUGH 99, Defendants.	CIVIL ACTION NO. C 85-1359 JPV AFFIDAVIT OF PREJUDICE TO DISQUALIFY JUDGE JURY TRIAL DEMANDED

I, Raymond Dobard, being first sworn, depose and say:

I am the plaintiff in the above entitled action, and that I cannot have a fair and impartial hearing or trial before the Honorable J.P. Vukasin, Jr., judge of the court, before whom this action is pending, by reason of:

1. His family relationship to a member of

defendant's government policy making body, in present or prior participation. 2. His reputation in the East Bay Community of being biased and prejudiced against blacks, and plaintiff herein is black.

Dated: Feb. 11, 1985

/s/ Raymond Dobard, Affiant

Exhibit 13-E

ORIGINAL FILED FEB, 11, 1985
(SUA SPONTE) FILED MAR 5, 1985

WILLIAM L. WHITTAKER

CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, PLAINTIFF, VS. CITY OF OAKLAND, ET AL., DEFENDANTS.	)	NO. C 85-1359 JPV TEMPORARY RESTRAINING ORDER AND ORDER SHORTENING TIME

For good cause shown, IT IS HEREBY ORDERED that plaintiff's motion for Temporary Restraining Order shall be heard on Thursday, March 7, 1985, at 10:00 a.m., in Courtroom 2. Plaintiff shall serve all papers relevant to the motion on defendants not later than 10:00 a.m. on Wednesday, March 6, 1985. Defendants' response, if any, shall be served and filed not later than 5:00 p.m. the same day.

IT IS FURTHER ORDERED that defendants

shall refrain from conducting any demolition activity on the property which is the subject of this action pending the March 7, 1985, hearing.

Dated: March 5, 1985

/s/ J. P. VUKASIN, JR., JUDGE
UNITED STATES DISTRICT COURT

Exhibit 13-A

FILED FEB 13, 1985
WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT
COURT, NO. DIST. OF CA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, v. CITY OF OAKLAND, et al., Defendants.	No. C 85-1359 JPV ORDER DENYING PLAINTIFF'S MOTION FOR ORDER SHORTENING TIME

Good cause appearing, plaintiff's motion for an order shortening time, filed on February 11, 1985, is hereby DENIED.

IT IS SO ORDERED.

Dated: Feb. 13, 1985

/s/ J.P. VUKASIN, JR., JUDGE
UNITED STATES DISTRICT COURT

Exhibit 13-B

FILED FEB 19, 1985

WILLIAM L. WHITTAKER

CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, Plaintiff, v. CITY OF OAKLAND, et al., Defendants.	)	No. C 85-1359 JPV ORDER DENYING PLAINTIFF'S MOTION FOR ORDER SHORTENING TIME AND SETTING HEARING ON MOTION FOR RECUSAL

Good cause appearing, IT IS ORDERED:

(1) That plaintiff's motion for an Order Shortening Time for hearing of his motion for recusal is DENIED;

(2) That plaintiff's motion for recusal shall be heard on March 21, 1985, at 10:00 a.m., in Courtroom 2. Defendants' opposition, if any, shall be filed not later than 5:00 p.m. on March 7, 1985, and plaintiff's reply, if any, shall be filed not

later than 5:00 p.m. on March 14, 1985.

Dated: Feb. 19, 1985

/s/ J.P. VUKASIN, JR., JUDGE

UNITED STATES DISTRICT COURT

FILED FEB. 20, 1985

WILLIAM L. WHITTAKER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD -v- CITY OF OAKLAND, et al.,	No. C 85-1359 JPV

TO: Raymond Dobard
1866 Alcatraz Ave.
Berkeley, CA 94703

Joyce Hicks
Office of City Atty
City Hall
14th & Washington Street
Oakland, CA 94612

(Counsel for Plaintiff is directed to serve a copy of this Notice upon any other party in this action not listed.)

YOU ARE HEREBY NOTIFIED that on April 4,

1985 at 10:00 a.m. in Courtroom 2 on the 17th floor of the Federal Building, 450 Golden Gate Ave., San Francisco, California, the HONORABLE JOHN P. VUKASIN, JR. will conduct hearing on Plaintiff's Motion for Recusal. The previously scheduled date of March 21, 1985 is vacated. The briefing schedule is also vacated and briefs will be filed in accordance with Local Rule 220-3 using the new hearing date.

WILLIAM L. WHITTAKER
Clerk, U.S. District Court

Dated: 2/20/85

by: /s/ Lani Warner, Court Clerk
Honorable J.P. Vukasin, Jr.

DISQUALIFICATION TO ACT IN PARTICULAR CASE
(Federal Statutes and Authorities)

Re: Mr. George Vukasin, who is the brother of the Judge and Officer of Party

A. IN GENERAL

The rule which disqualifies a judge where, for example, he is interested in the subject matter of the suit or is within a certain degree of relationship to one of the parties has been said to have its foundation in public policy. It is intended not merely for the parties to a suit, but for the general interests of justice, by preserving the purity and impartiality of the courts, and the respect and confidence of the people for their decisions.

4. Bias or Prejudice

§166. Generally.

Public confidence in the courts requires that cases be tried by unprejudiced and unbiased judges. Unbiased judges are of first importance to litigants and the public. The

right to disqualify a judge for bias and prejudice is substantive and not one which will be lightly denied. At common law, bias or prejudice on the part of a judge, not the result of interest or relationship, is not supposed to exist....

§215. Under federal statute.

A federal statute provides that whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. An affidavit upon information and belief is sufficient.

1. Generally

Recusal statute 28 USCS §445(a) and (b), requires mandatory disqualification of judge in any proceeding in which his impartiality might reasonably be questioned or where he has personal bias or prejudice concerning party. United States v. Brown (1976, CA5 La) 539 F2d 467.

28 USCS §455(a) is general in nature and does not rest on personal bias and prejudice structure of either 28 USCS §144 or 28 USCS §455(b)(1); it is broader than 28 USCS §144 disqualification being warranted not only where there is actual bias or prejudice, but where impartiality of judge might reasonably be questioned. United States v. Baker (1977, DC Tenn) 441 F Supp 612.

2. Purpose of 1974 amendments

1975 amendment to 28 USCS §455 changed standard for recusal from subjective one, which left to judge in his opinion decision whether it would be improper to sit, to

present objective standard requiring disqualification whenever judge's impartiality might reasonably question, change being intended to foster public confidence in judicial system by requiring disqualification if there is reasonable basis for doubting judge's impartiality. United States v. Cowden (1976, CA1 Mass) 545 F2d 257.

Legislative history of 1974 amendment to 28 USCS §455 leaves no doubt that Congress intended to adopt objective standard as opposed to judge's own opinion of his impartiality. Fong v. American Airlines, Inc. (1977, DC Cal) 431 F Supp 1334.

...§455(a) also expressly does away with "duty to sit" doctrine, which required judge to hear case unless clear demonstration of extrajudicial bias or prejudice was made. Blizard v. Frechette (1979, CA1 Mass) 601 F2d 1217.

In determining whether judge should

recuse under 28 USCS §455(a), issue is not whether judge is impartial in fact, but rather whether reasonable man might question impartiality under all circumstances. United States v. Gigax (1979, CA10 Colo) 605 F2d 507.

Goal of 28 USCS §455(a) is to foster appearance of impartiality, and any question of judge's impartiality threatens purity of judicial process; since statute focuses on appearance of impartiality, as opposed to existence in fact of bias or prejudice, judge faced with this potential ground for disqualification ought to consider how his participation in given case looks to average man on street. Potashnick v. Port City Constr. Co. (1980, CA5 Ala) 609 F2d 1101.

150 So.2d 077

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

v.

STATE OF ALABAMA

3 Div. 996

Supreme Court of Alabama

Feb. 28, 1963

"The trial Court Judge erred in denying Appellant's Motion to recuse himself (trial Judge) from hearing this cause, and as such it constituted a denial of rights secured Appellant under the equal protection and due process of law clauses of the Fourteenth Amendment to the United States Constitution."

[7] The judge before whom a proceeding is brought must determine, in the first instance, the question of his own competency. This decision may present to him a delicate and difficult question, but in solving it he is without discretion, and his action, if erroneous, is subject to be controlled by mandamus seasonably applied for. Smith, State ex rel. v. Pitts, Judge, 139 Ala. 152,

36 So. 29; Ex parte Dew, 7 Ala. App. 437, 62 So. 261.

AUTHORITIES IN SUPPORT OF DISQUALIFICATION OF JUDGE

Judge Vukasin's prejudicial ruling of "dismissal with prejudice," that drastically foreclosed appellant's property rights in this type of civil action, of a property owner seeking relief from the court, clearly demonstates his "extrajudicial" bias or prejudice, and thus present one of several factual grounds of impartiality.

Supreme Court Rules were adopted to facilitate business and be an aid to the court in its prompt and orderly disposition. Supreme Court Rules, rule 9(d).

Appendix "F"

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DOBARD, PLAINTIFF,	)	NO. C 85-1359 JPV
VS.	)	SAN FRANCISCO, CA
CITY OF OAKLAND, ET AL., DEFENDANTS.	)	THURS., 3/7/85

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE

J. P. VUKASIN, JR., JUDGE

APPEARANCES:

FOR PLAINTIFF: (IN PRO PER) RAYMOND DOBARD
1866 ALCATRAZ AVENUE
BERKELEY, CA 94703

FOR DEFENDANTS: RICHARD WINNIE, CITY ATTY
JOYCE M. HICKS, DEPUTY
ONE CITY HALL PLAZA, 5TH FL.
OAKLAND, CA 94612

REPORTED BY: VIVIAN A. PELLA
OFFICIAL REPORTER
U.S. DISTRICT COURT

THURSDAY, MARCH 7, 1985

THE COURT: DOBARD VERSUS THE CITY OF OAKLAND. IT'S BEEN ADDED ON AS A LATE ADDITION.

THE CLERK: CIVIL 85-1359. YOUR APPEARANCES, PLEASE.

MS. HICKS: GOOD MORNING, YOUR HONOR, I'M JOYCE HICKS FOR THE CITY OF OAKLAND.

MR. DOBARD: YOUR HONOR, I'M RAYMOND DOBARD, THE PLAINTIFF IN THIS ACTION.

YOUR HONOR, I WOULD LIKE TO CALL TO YOUR ATTENTION THAT THERE'S A WRIT OF PROHIBITION THAT'S BEEN FILED IN THIS MATTER.

THE COURT: JUST A MINUTE. JUST A MINUTE. I HAVE TO STEP INTO MY CHAMBERS. JUST SIT DOWN AND I WILL BE WITH YOU IN A MOMENT.

(SHORT RECESS.)

MR. DOBARD: YOUR HONOR, AS I WAS PREVIOUSLY SAYING I HAVE A WRIT OF PROHIBITION THAT'S BEEN FILED. AND YOUR HONOR, I WOULD LIKE TO CALL TO YOUR ATTENTION THAT BEFORE YOU MAKE ANY RULINGS THAT YOU WERE DISQUALIFIED ON FEBRUARY 11TH, 1985 AND

YOU CANNOT EXERCISE JUDICIAL DISCRETION.

THE COURT HAS HELD THAT IF THE APPLICATION FOR CHANGE OF JUDGE IS TIMELY MADE SUCH REQUEST FOR CHANGE OF JUDGE PRESENTS NO QUESTION OF DISCRETION OR POLICY BUT THAT THE CHANGE MUST BE GRANTED AS A MATTER OF RIGHT. AND THE PLAINTIFF IS CITING RUSSEL VERSUS SUPERIOR COURT.

THE COURT: I HAVE ON THIS MORNING'S CALENDAR A REQUEST FOR A RESTRAINING ORDER. THE ONLY THING ON MY CALENDAR THIS MORNING IS A REQUEST FOR A RESTRAINING ORDER RESTRAINING THE CITY FROM DEMOLISHING A BUILDING.

MR. DOBARD: YOUR HONOR, THERE'S NO DISCRETION BEFORE YOU THIS MORNING BASED ON MY AFFIDAVIT THAT WAS FILED ON FEBRUARY THE 11TH THAT SAYS I CANNOT HAVE A FAIR AND IMPARTIAL HEARING IN THIS COURT, YOUR HONOR, AND THAT'S SELF-ENFORCING, YOUR HONOR, AND ACCORDING TO THE STATUTE OF UNITED STATES CODE SECTION 455 -- 28455(A), YOUR HONOR, YOU DON'T HAVE THAT DISCRETION AFTER I HAVE FILED AN AFFIDAVIT DISQUALIFYING YOU FOR YOU TO MAKE ANY RULINGS ON ANY TIME OF --

THE COURT: YOU'RE SAYING THE FILING OF THE AFFIDAVIT STOPS EVERYTHING?

MR. DOBARD: YES, YOUR HONOR, IT STOPS EVERYTHING.

THE COURT: WHAT'S YOUR POSITION ON THAT?

MS. HICKS: MY POSITION, YOUR HONOR, IS THAT IT DOES NOT.

MR. DOBARD: YOUR HONOR, I WOULD LIKE TO FURTHER --

THE COURT: HAVE YOU FILED WITH THE COURT ANY BRIEF OR PLEADINGS SUPPORTING YOUR POSITION THAT THE FILING OF YOUR DECLARATION --

MR. DOBARD: YES, YOUR HONOR.

THE COURT: -- STAYS ANY FURTHER PROCEEDINGS IN THIS COURT UNTIL RULED UPON?

MR. DOBARD: THE WRIT OF PROHIBITION WAS FILED, YOUR HONOR, AND THE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE DISQUALIFICATION.

THE COURT: WHO SIGNED THE WRIT OF PROHIBITION?

MR. DOBARD: IT'S JUST BEEN RECENTLY

FILED, YOUR HONOR, AND IT WAS -- AND IT HAS NOT BEEN SIGNED.

THE COURT: OKAY.

MR. DOBARD: i JUST WANT THE RECORD TO SHOW, YOUR HONOR, THAT MANDAMUS WILL FOLLOW RELATIVE TO ANYTHING THAT'S DONE IN THIS COURT AFTER MY AFFIDAVIT IS FILED TO BE REVIEWED ON APPEAL.

THE COURT: HAVE YOU REVIEWED THOSE DOCUMENTS?

THE LAW CLERK: NO.

THE COURT: VERY WELL.

MR. DOBARD: YOUR HONOR --

THE COURT: I HAVE BEFORE ME A REQUEST FOR A TEMPORARY RESTRAINING ORDER. I HAVE REVIEWED THE HISTORY OF THIS CASE AND IT APPEARS TO ME THAT MR. DOBARD HAS CONSISTENTLY BEEN PROVIDED WITH ADEQUATE NOTICE OF THE CITY'S INTENTIONS. HE HAS BEEN GIVEN NUMEROUS OPPORTUNITIES TO ABATE THE NUISANCE, AND HAS FAILED TO DO SO.

INDEED, IT APPEARS THAT HE HAS ACTIVELY SOUGHT TO FRUSTRATE THE CITY'S LEGITIMATE EFFORTS. AND IT APPEARS TO THE COURT THAT

THERE IS AMPLE STATUTORY AUTHORITY FOR BOTH THE PROCEDURES AND THE GOAL OF THE CITY'S EFFORTS, AND MR. DOBARD HAS NOT MADE THE MEANEST EFFORT TO COMPLY WITH SUCH PROPERLY-PROMULGATED LAWS.

IT APPEARS THERE'S NO REASON FOR GRANTING THE TEMPORARY RESTRAINING ORDER WHICH HE SEEKS AND THE CITY SHOULD BE ALLOWED TO PROCEED WITH ITS PROGRAM.

ACCORDINGLY, THE MOTION FOR THE TEMPORARY RESTRAINING ORDER IS DENIED.

NOW, MR. DOBARD, YOU MAY HAVE ANOTHER CONTENTION AND MAYBE THERE IS MERIT TO OTHER CONTENTIONS THAT YOU HAVE PREVIOUSLY FILED WITH THE COURT OR WHICH YOU MAY IN THE FUTURE. I'M NOT RULING ON THOSE AT ALL. THE ONLY THING BEFORE ME IS THE TEMPORARY RESTRAINING ORDER. I REVIEWED THE PAPERS AND THERE'S ABSOLUTELY NO REASON WHY THIS COURT--

MR. DOBARD: YOUR HONOR --

THE COURT: -- CAN GRANT A TEMPORARY RESTRAINING ORDER. MY CLERK HAS JUST NOTIFIED ME THAT YOUR MOTION FOR RECUSAL IS SET FOR HEARING ON APRIL 4TH AND I'LL BE

HAPPY TO ENTERTAIN THAT ON ITS OWN MERITS.

MR. DOBARD: YOUR HONOR, THE ONLY THING BEFORE YOU TODAY IS A MINISTERIAL DUTY AND --

THE COURT: ANYBODY WHO TELLS ME THAT DECIDING WHETHER TO ISSUE OR NOT ISSUE A RESTRAINING ORDER IS MERELY A MINISTERIAL DUTY IS MISSTATING WHAT THE LAW IS. THE COURT IS IN RECESS.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

EXHIBIT 13-G

Filed
April 03, 1985
Phillip B. Winberry
Clerk, U.S. Court of Appeals

United States Court of Appeals for
the Ninth Circuit

Raymond Dobard,
Petitioner

vs.

United States District Court for the Northern District of California
Respondent

and

City of Oakland, et al.
Real party in interest

No. 85-7130
D.C. No. CV 85-1359 JPV
Northern California

ORDER

Before: Goodwin, Skopil, and Norris,
Circuit Judges

The trial judge has not yet ruled on petitioner's motion to disqualify him. The petition for a Writ of Mandamus is denied without prejudice to renew the request after the trial judge has ruled on the disqualification motion.

Mo Cal. 3/25/85

Exhibit 13-F

Original Filed
April 24, 1985
William L. Whittaker
Clerk U.S. District Court

Received
April 16, 1985
William L. Whittaker, Clerk

United States District Court
Northern District of California

Raymond Dobard
Plaintiff

vs.

City of Oakland, et al.
Defendants

Civil Action No.
C85-1359 JPV

ORDER - DENYING PLAINTIFF'S MOTION FOR RECUSAL, DENYING PLAINTIFF'S MOTION REQUESTING THAT THE RECUSAL HEARING BE BEFORE ANOTHER JUDGE AND DENYING PLAINTIFF'S MOTION FOR WITHDRAWL OF PREVIOUS ORDERS.

This motion came on for hearing on April 4, 1985 on Plaintiff motion for recusal.

The court having heard the arguments of plaintiff and defendant's counsel and having reviewed the pleadings and evidence in this matter and being fully advised, it is

ORDERED, that plaintiff's motion be denied.

It is further

ORDERED, that motions for summary judgment from the parties may be heard on June 6, 1985.

S / J.P. Vukasin, Jr., Judge
U.S. District Court

Dated: April 24, 1985

Exhibit 8-K(4)(a)

Filed
April 30, 1985
Phillip B. Winberry, Clerk
U.S. Court of Appeals

United States Judicial Council for
the Ninth Circuit

In re Charge of
Judicial Misconduct

No.: 85-8074
ORDER

Before: Browning, Chief Judge

A complaint alleging misconduct has been filed against a district judge (J.P. Vukasin, Jr.) in this circuit pursuant to the Ninth Circuit Procedure for Processing Complaints of judicial misconduct, 28 U.S.C. 9th Cir. R. App. B, issued under the Judicial Council Reform and Judicial Conduct and Disability Act of 1980. Pub. L. No. 96-458, 94 Stat. 2035 (1980).

Complaint is the plaintiff in a civil action pending in the district court. Shortly after filing suit, complainant also filed a motion for the disqualification of the judge

pursuant to 28 U.S.C. Sec. 455(a), a motion for a temporary restraining order (TRO) and injunctive relief, and a motion for an order shortening time to allow these motions to be heard in less time than provided by rule. The district judge denied the motion for an order shortening time, placed the motion for a TRO and injunctive relief on calendar for hearing and set the motion for disqualification for hearing two weeks after that. By subsequent order (Sua Sponte) the court continued the disqualification hearing for two weeks. On the date originally scheduled, the court held the hearing on and denied complaint's request for a TRO and injunctive relief.

Complainant alleges it was judicial misconduct for the judge to act in this case. Complainant contends the judge was automatically disqualified by the filing of the motion for disqualification, and therefore any subsequent judicial acts, such as making "Sua Sponte" motions, discretionary rulings, and orders were improper. These objections all relate to

the merits of a decision or procedural ruling of the judge, and are therefore inappropriate under these procedures. Procedures, 3(A)(ii), see In re charge of Judicial Misconduct, 613 F.2d 768, 769 (9th Cir. 1980).

The complaint is dismissed.

S / James Browning

Chief Judge

Exhibit O-H

The Oakland Housing Code Ordinance No. 8549 C.M.S.

Sec. H-207 (a) Creation-membership Housing Advisory and Appeals Board. There is hereby created a Housing Advisory Appeals Board to consist of seven members who are residents of the City of Oakland and are qualified by training and experience to pass upon matters pertaining to housing and health, safety and welfare of the public and;

NONE OF WHICH MAY BE A PUBLIC EMPLOYEE. (Appellant, Dobard draws this Honorable Supreme Court of the United States' attention to the arbitrary course of conduct of appellee's Housing Division Official, Julius F. Thomas, by acts of fraud and misrepresentation, wilfull and malicious, passed on matters pertaining to appellant's housing, with ex-parte evidence at an administrative hearing that deprived appellant of his vested right of an opportunity to be heard and said Ex-Parte evidence was "affirmed" by the Housing Advisory and Appeals Board as an

affirmation of a fraudulent misrepresentation and said resolutions Nos. 4166 (9/6/84) and 4179 (10/4/84) that resulted therefrom are null and void and thus appellant's properties were destroyed for no public purpose, and the passing on housing acts of City employee Thomas is in violation of O.H.C. Sec. H-207(a).

Sec. H-207(b) Duties and Powers of H.A.A.B.

1) To consider written appeals and protest concerning the provisions of this code.

3) At any time, in exceptional cases where it is impractical or physically impossible to comply with the strict letter of this code, and in order to provide for reasonable interpretation of the provisions thereof, upon written application of the owner, the Department, or any person in control of the premises to grant variances from the strict requirements of this Code.

4) To determine whether a residential building is in fact a substandard residential building, and/or an unsafe building within the meaning of said terms in this code.

(J) Reports. The Housing Advisory and

Appeals Board shall submit its findings and recommendations in writing to the aggrieved person.

(L.) Appeals. At any time prior to the giving of the first official notice, the property owner, may appeal to the Housing Advisory Appeals Board on subjects coming within the Board's jurisdiction. The appeal shall be made in writing and filed at the office of the Board. The decision of said Board shall be final and conclusive.

Sec. H-301 General. Whenever the Housing Division Official determines by inspection that an existing residential building or buildings has become substandard or unsafe, he shall institute proceedings to cause the repair or rehabilitation of the building.

Sec. H-302. Notification. Order to Comply or Show Cause. Hearing, etc.

The Housing Division Official shall give Official Notice in writing to the owner of a substandard residential building, or an unsafe building, specifying the inadequacies and hazards contained herein. He shall in said

Official Notice fix the time and place of hearing before the Housing Advisory and Appeals Board where said owner, may show cause, if any he has, why said building should not be declared a substandard residential building, or an unsafe building. Said Official Notice shall be given as hereinafter set forth.

The Housing Advisory and Appeals Board, hereinafter called H.A.A.B., at the time and place fixed for such hearing shall hear said matter and shall: 1.) Find and determine and declare that said building is, in fact, a substandard residential building or an unsafe building, or both; and thereupon determine what, if any of the specified inadequacies or hazards which render the building a substandard residential building or unsafe building must be corrected or abated to render said building standard and safe; or 2.) Find and determine that said building is neither a substandard residential building nor an unsafe building. Said hearing shall be conducted pursuant to the rules and regulations of the board.

The HAAB shall render its decision in writing and shall give Official Notice thereof to all interested persons appearing at said hearing.

Sec. H-303. Official Notice - How Given. Any official written notice required by the provisions of this code, unless it is herein otherwise specifically provided, shall be given in the following manner: The Housing Department shall personally serve, or shall send one copy of the Official Notice by certified mail, postage prepaid, to the person owning the land on which the building is located, or at an address as known to the City Clerk. The Housing Division Official upon giving notices as aforesaid shall file an affidavit thereof with the City Clerk certifying to the time and the manner in which such notices were given.

Sec. H-305. Demolition Procedure. Whenever the Housing Division Official shall order an unsafe building or a substandard residential building demolished, he shall commence proceedings before the HAAB to abate

said building as a public nuisance, and said Board shall properly notice and set the matter for hearing and decision, in accordance with the rules of procedure of the Board, and if said public nuisance has not been abated by the owner then the Board shall authorize and direct the Housing Division Officials to raze and demolish said building.

Sec. H-306. Standard For Demolition. The following standards shall be followed by the board in determining whether an unsafe building or a substandard residential building shall be demolished:

1.) If the unsafe building or the sub-standard residential building is in such condition as to make it dangerous to the health, morals, safety or general welfare of the neighborhood wherein it is located, it shall be demolished; or

2.) If a public nuisance as defined in the Civil Code of the State of California it shall be demolished.

3.) If a fire hazard it shall be demolished.

4.) If the unsafe building or the substandard residential building cannot reasonably be repaired or rehabilitated so that it shall no longer exist in violation of the law, it shall be demolished.

Exhibit 13-D

Filed

March 18, 1985

William L. Whittaker, Clerk

U.S. District Court

Received

Mar. 12, 1985

William L. Whittaker, Clerk

United States District Court

Northern District of California

Raymond Dobard — Civil Action No.

Plaintiff — C85-1359 JPV

vs. — ORDER

City of Oakland, et al. — Denying Plaintiff's

Defendants — Motion / TRO

This cause came on for hearing on March 7, 1985 on plaintiff's motion for a temporary restraining order, plaintiff appeared in pro per, defendant appeared through its deputy city attorney, Joyce M. Hicks.

The court having heard the argument of plaintiff and defendant's counsel and having reviewed the pleadings and evidence in this matter and being fully advised, it is ORDERED,

that the plaintiff's motion be denied.

Dated: Mar. 18, 1985.

S / J.P. Vukasin, Jr., Judge

Entered in Civil Docket 3/19/85

To: Alameda County Recorder's Office

Please file with County Recorder

D E M O L I S H E D

Subject Property: 9627 B Street

Owner: Raymond Dobard

Former Owner: Evelyn S. Minks

TERMINATION OF NOTICE OF SUBSTANTIAL AND/OR UNSAFE RESIDENTIAL BUILDING

I hereby certify that the notice of sub-standard and/or unsafe residential building given April 16, 1975, by the Housing Division Official and Secretary to Housing Advisory and Appeals Board, City of Oakland, in the Office of the County Recorder of Alameda County, and recorded as Document No. 75-52340 on April 22, 1975, is no longer of any force or effect as the building has been demolished on March 19, 1985.

Said notice was filed against property described as follows: Assessor's Parcel No. 44-4981-8

Owner of Record: Raymond Dobard

Dated: This 27th day of March 1985.

City of Oakland

S / Julius F. Thomas,

Housing Division Official and

Secretary to Housing Advisory

and Appeals Board

(Notary seal)

cc: HAAB No. 2363A

Hsg. Inspector: Groves

Termination Ref. File

Exhibit B-B

CITY OF OAKLAND

Interoffice Letter

To: Office of the City Manager

Attention: Henry Gardner

Date: February 26, 1985

From: Office of Community Development

Subject: City Council Request for Report on Demolition Action at 9625 "B" Street

On February 19, 1985, Mr. Ray Dobard appeared at the City Council meeting to request a stay of demolition on his property at 9625 "B" Street. At this meeting, the Council directed staff to report on City action regarding the property. Attached is a chronological history of the case.

Mr. Dobard purchased the building in 1979, two years after it had been declared a public nuisance. At that time, Mr. Dobard agreed to complete rehabilitation of both buildings (the front building is known as 9627 "B" Street) in 120 days. Over the next

two years, staff observed slow progress, primarily on the rear building. In addition, the buildings were secured and a fence placed around the property. Since the building was secured and some progress on rehab was being made, follow-up action was not pursued.

In June of 1984, the property was found vacant and staff began the usual follow-up process. Staff had not inspected the interior of the property since October 2, 1980. Exterior inspections of the property had been made on September 3, 1981, and June 26, 1984. Mr. Dobard did not allow staff to reinspect his property in June of 1984; consequently, due to the time that had elapsed since the October 2, 1980, interior inspection, its incomplete condition at that time, the exterior condition of the property and Mr. Dobard's failure to provide access to the property, staff proceeded to the next step in the process, demolition.

Mr. Dobard received proper notice of the intended demolition and did not contact anyone on staff until January 13, 1985. Due to

the extensive time which had passed on this case, the staff, with advice of the City Attorney, proceeded with the demolition despite the extension request.

The owner, Mr. Dobard, has had nearly six years to upgrade this property and has made minimal progress toward rehabilitation of the property. Since the City staff has been instructed to remove blighting influences whenever possible and this property has been vacant for nearly six years, the actions undertaken have been reasonable and in the best interests of the City.

/s/ Roy S. Schweyer, for
Antoinette Hewlett, Director,
Office of Community Development

Exhibit A

March 20, 1975

LIST OF VIOLATIONS

9625 "B" Street

Oakland, California

1. The vacant building is not properly secured against unauthorized entry. Sections 1.207 and 27.414 OFC, Section 204.09 OMC.

2. The following items were found to be in violation due to lack of maintenance and repair. Sections H-601, H-701, H-1001, and/or 104(h) OBC. Repair, replace, remove, or provide in order to maintain proper repair.

a. The roof is damaged and deteriorated.

b. The underfloor area is open and unscreened.

c. The siding in several areas is damaged.

d. There is wood-soil contact at various places at the foundation.

3. The survey indicates that the basic wiring throughout the structure may be

inadequate for today's usage; it is recommended that a licensed Electrical Contractor be consulted to make a determination as to wiring needs.

4. All of the plumbing fixtures throughout the structure with the exception of the bath tub have been removed and/or are broken. Section H-523 OHC. Provide necessary fixtures and appurtenances and install with permit.

5. IMPORTANT NOTICE -- (Applicable to rental housing).

The conditions set forth in this letter are in violation of local codes dealing with health, safety, or building. If said conditions are not corrected with a (6) six-month period or if you have not received an exemption due to lack of financing for repairs, the City of Oakland will mail a notice of noncompliance to the California State Franchise Tax Board as required by Sections 17299 and 2436.5 of the Revenue and Taxation Code.

NOTE: Should any further deficiencies

occur after the date of this letter from vandalism or any other cause, they shall be corrected as well.

Exhibit B

BUILING PERMITS FOR REPAIR AND ALTERATIONS FOR 9625 "B" STREET AND 9627 "B" STREET.

CITY OF OAKLAND, HOUSING CONSERVATION, OFFICE OF COMMUNITY DEVELOPMENT RECEIPT NO. 5346, DATED 8-8-79, FEE $6.00.

-o-

CITY OF OAKLAND, INSPECTIONAL SERVICES RECEIPT NO. 66277, DATED 8-6-79:

BUILDING PERMIT # D10998 . . .	$45.50
CHECKING FEE	$27.30
ROOFING PERMIT	74.21

-o-

CITY OF OAKLAND, ELECTRICAL INSPECTION DIVISION - PERMIT NO. 89758

Exhibit C

CITY OF OAKLAND

OFFICE OF COMMUNITY DEVELOPMENT

HOUSING CONSERVATION

October 16, 1980

Mr. Roy Dobard

3250 E. 14th Street

Oakland, CA 94601

RE: 9625/27 "B" Street

Dear Mr. Dobard:

At your request, I made a callback at the above property on October 2, 1980. The purpose was to verify work done on the 9627 (front) building which was not noted on my previous call and to note additional progress on the rear building, 9625.

My observation during this visit showed the following work accomplished on 9627 "B" Street (front building):

1. Copper ground (3/4" x 8') installed to the electrical system.

2. Repairs made to electrical conduit for sub-feed to rear building.

3. Installed 40-foot chain-link fence along the east side of the property.

4. Installed new gate and post at front of property.

5. Installed new electrical service.

6. Removed illegal addition from rear.

7. Removed deteriorated front porch floor and roof.

8. Repaired roof sheathing on the main portion of the building.

9. Cleaned up front, side, and rear yards and secured the building.

Work on 9625 "B" Street (rear building) was still progressing as noted on my visit to the property on September 12, 1980. Work completed to date:

1. Removed and replaced deteriorated siding and structural members.

2. Corrected wood-soil contact.

3. Roughed in all new 2" waste lines for plumbing in kitchen and bath.

4. Treated all foundation area wood with wood preservative.

5. Removed walls and floor of bathroom

to be replaced with new material.

6. Framed openings for new aluminum windows.

7. Installed new 6' patio door.

8. Replaced roof.

9. Reinforced roof with new jack studs.

10. Excavated yard area for new sewer.

11. Removed illegal room addition from rear of building.

In summary, the review of work completed as of September 12, 1980, indicates that substantial progress has been made. As long as the work continues at its present rate, further enforcement action will be held in abeyance.

If you have further questions, you may call Julius F. Thomas at 273-3381, 8:00-4:30 weekdays.

Sincerely,

/s/ Julius F. Thomas

Assistant Housing Manager

CITY OF OAKLAND

Exhibit D-1

September 12, 1980

CERTIFIED MAIL No. 8824119

Mr. Julius Thomas

City of Oakland

Housing Conservation Division

City Hall

Oakland, California 94612

Re: 9625 and 9627 "B" Street

Dear Mr. Thomas

9625 "B"

As per your on site inspection of our properties located at above address on September 12, 1980, it was observed that the attached list of 5 Housing Code Violations dated March 20, 1975 by the City of Oakland relative to 9625 "B" Street (Rear) were repaired and corrected. All violations were corrected with the benefit of proper building permits. All violations were corrected without the benefit of a Rehab Loan, therefore the expected completion was prolonged and delayed. Please remove these

buildings from your substandard property list.

Regards,

/s/ Ray Dobard

Copies

Enclosure

BEST AVA

9625 "B"
Front Elevation
BEFORE

EXHIBIT
C-1

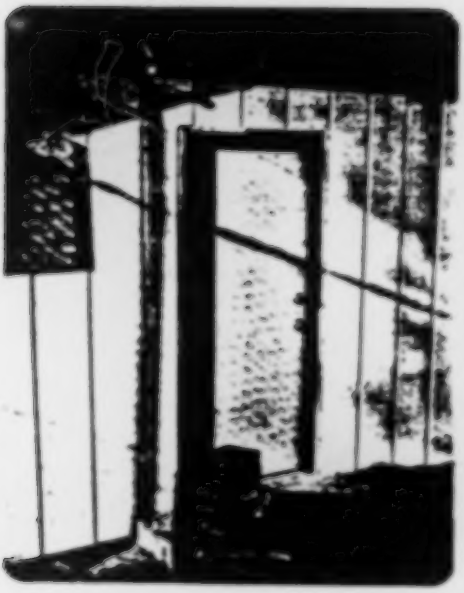
8-13-79

LABLE COPY

9625 "B"
Front Elevation
AFTER

EXHIBIT
C-1

10-16-80



BEST AVAIL

9625 "B"
East Side
Elevation
BEFORE

8-13-79

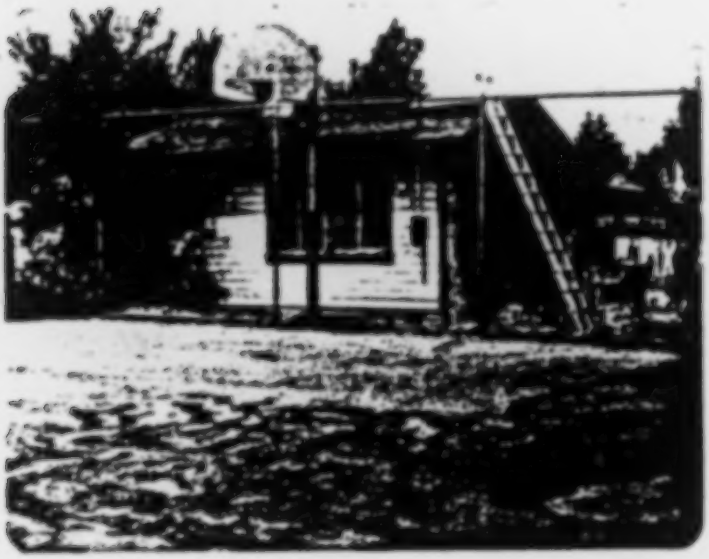
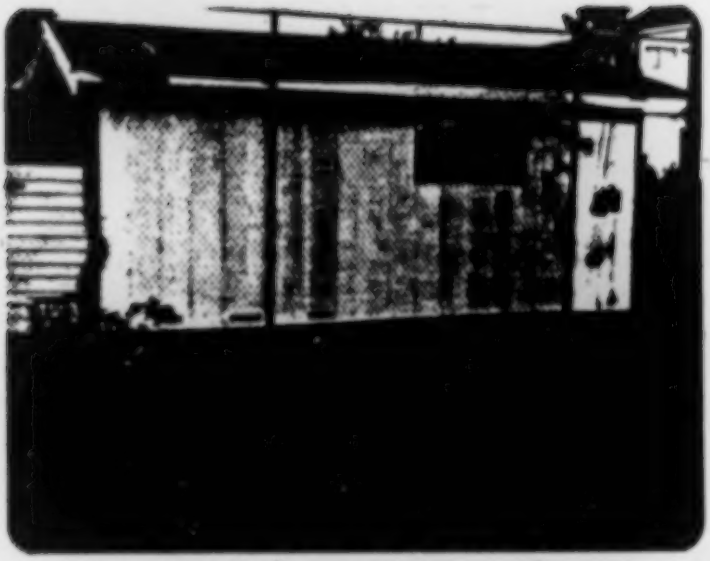


EXHIBIT C(1)

ABLE COPY

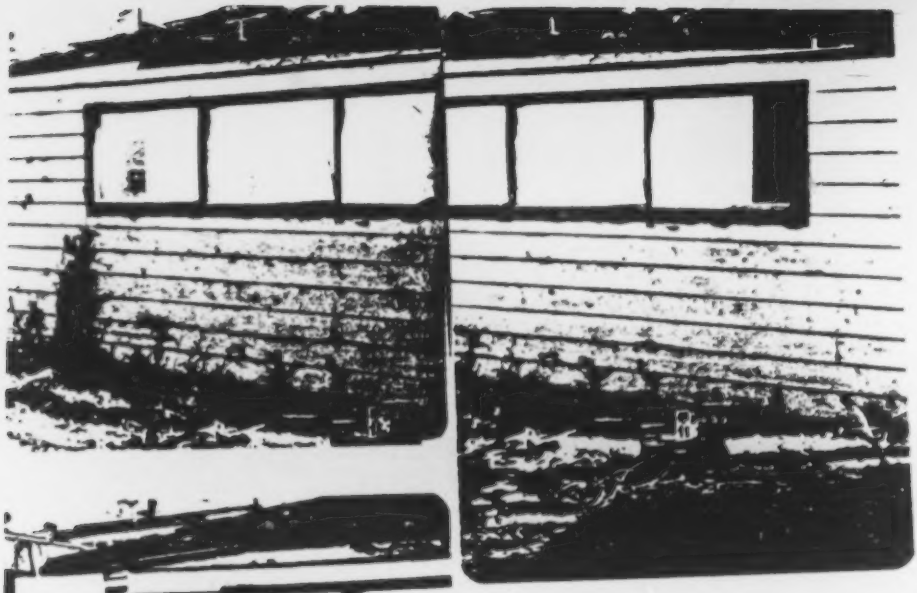


9625 "B" EAST ELEVATION
AFTER

EXHIBIT C-1

10-16-80

BEST AV



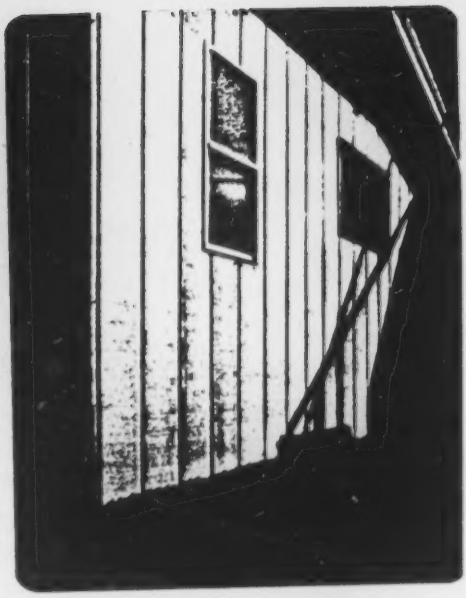
9625 "B" ↑
Rear Elevation including the illegal addition BEFORE

EXHIBIT C-1

on Process of Removing the illegal addition →

8-13-79

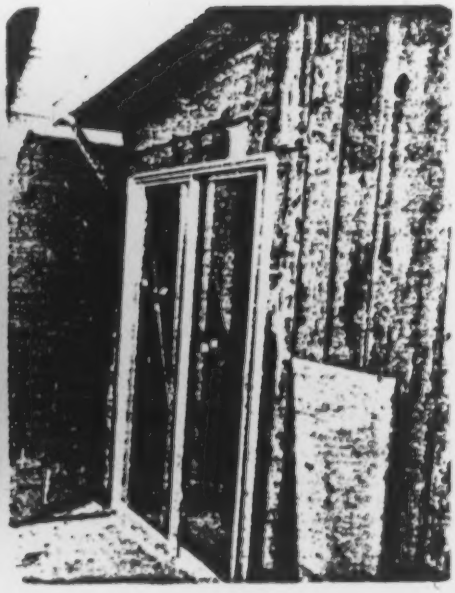
VAILABLE COPY



9625 "B"
Rear Elevation
AFTER

EXHIBIT
C-1

10-16-80



BEST AVAILABLE COPY

EMPLOYING OAKLAND'S MINORITIES AND WOMEN ON THE PROJECT.

EXHIBIT C-1

Petition

February 23, 1985

To: City of Oakland

From: Neighbors of 9625 "B" Street and 9627 "B" Street, Oakland, California

We the undersigned neighbors of the above properties, hereby declare, that the above subject properties does not endanger the health, morals, property or well being of our neighborhood.

Signatures of twenty surrounding neighbors of 9625-27 "B" Street

Exhibit No. 11

CITY OF OAKLAND

February 6, 1985

Mr. Ray Dobard

PO Box 3610

Berkeley, CA 94703

Re: 9625 "B" Street

Oakland, California

Dear Mr. Dobard:

This is to confirm the information given to you by telephone this date concerning the above property.

I have been advised by the City Attorney's Office of the City of Oakland that your request for a ninety (90) day continuance on the demolition action, scheduled to be heard February 7, 1985, may not be heard by the Housing Advisory and Appeals Board. I have been directed to proceed with the plans to demolish the structure.

You will today be sent our official letter directing you to remove all personal property

and/or items of value from the building, and the notice to the contractor to proceed with demolition will be mailed in ten (10) days; you will be sent a copy of the notice to proceed mailed to the contractor.

Sincerely,

HOUSING ADVISORY & APPEALS BOARD

/s/ JULIUS F. THOMAS, Secretary
Assistant Housing Manager

JFT:lpo

cc: Joyce Hicks, Attorney
City Attorney's Office

Roy Schweyer
Housing Manager

James Blyler
Supervising Housing Inspector

Exhibit C-C4 (4)

City of Oakland

Housing Advisory and Appeals Board

Hearing on Demolition Proceedings to Abate Certain Buildings Determined and Declared a Public Nuisance.

Dated: August 18, 1977

Resolutions Nos. 3465 and 3466

Owner: Larry and Lackurance Williams

Affected Premises: 9625 "B" Street and 9627 "B" Street

Whereas, the evidence presented included the following:

1. Action on premises started Aug. 15, 1966.

2. List of violations dated March 20, 1975.

3. Resolution 2866 declaring buildings substandard administratively April 16, 1975.

4. Letter dated Jan. 5, 1977, to Larry Williams advising him of rescheduling of case due to lack of progress.

Exhibit C-C 3 (1-2)

CITY OF OAKLAND

OFFICE OF COMMUNITY DEVELOPMENT

MEETING #511

HOUSING ADVISORY AND APPEALS BOARD MINUTES

Thursday, September 6, 1984, 9:30 a.m.
Conference Room 115, Oakland City Hall,
Oakland, California

PRESENT: Rev. Carl Howard, Chair
Sophie Hammes, Vice-Chair
Fred Payne
Louie Rubenstein
Julius F. Thomas, Secretary

Minutes of the August 2, 1984 meeting were approved as recorded. Moved to HAMMES, seconded by PAYNE: (4) Ayes, (2) Excused, (1) Vacancy.

NEW BUSINESS: Demolition and properties approved - Resolution 4166 below.

MOTIONS & RESOLUTIONS:

Moved/Seconded: Hammes/Payne

Resolution: 4166

Affected Address: 9627 "B" Street

Decision: Demolitions approved by the Secretary affirmed by the Board.

Exhibit C-C 4

CITY OF OAKLAND

OFFICE OF COMMUNITY DEVELOPMENT

MEETING #512

HOUSING ADVISORY AND APPEALS BOARD MINUTES

Thursday, October 4, 1984, 9:30 a.m.
Conference Room 115, Oakland City Hall,
Oakland, California

PRESENT: Rev. Carl Howard, Chair
James Bruce
Sophie Hammes, Vice-Chair
Fred Payne
Louie Rubenstein
Julius F. Thomas, Secretary

Minutes of the September 6, 1984, meeting were approved as recorded. Moved by PAYNE, seconded by BRUCE: (4) Ayes (Howard arrived 9:37), (2) Excused, (1) Vacancy.

REPORT OF STAFF: Resolution 4166 prepared affirming demolition properties. Original Resolution filed in the office of the

Secretary.

NEW BUSINESS: Approval of demolition properties - Resolution 4179 below.

MOTIONS & RESOLUTIONS:

Moved/Seconded: Hammes/Payne

Resolution: 4179

Affected Address: 9625 "B" Street

Decision: Demolitions approved by the Secretary affirmed by the Board.

Operating Agreement

THIS AGREEMENT, made this 21st day of October 1963, by and between the City of Oakland, a municipal corporation (hereinafter called "City") and the County of Alameda, a political subdivision of the State of California (hereinafter called "County"), First parties, and Oakland Alameda County Coliseum, Inc., a non-profit corporation organized and existing under and by virtue of the laws of the State of California (hereinafter called "Operator", Second Party.

Whereas:

W I T N E S S E T H :

The City and the County have heretofore made and entered into an agreement with the operator, dated as of October 21, 1963, under the terms of which the operator will operate and manage the Coliseum complex for and on behalf of the City and the County during the term thereof.

Exhibit 8-JJJ (c)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is executed this 17th day of September, 1985 between the Oakland-Alameda County Coliseum, Inc., a California non-profit corporation ("Coliseum" hereafter) and the Oakland Athletics Baseball Company, a California limited partnership ("Athletics" hereafter).

RECITALS OF FACT

Coliseum and the Athletics are parties to an existing License Agreement pertaining to the occupancy by the Athletics of Stadium. The License Agreement is originally dated March 29, 1969 and has been amended several times, including an amendment dated September 19, 1980 executed at the time the License Agreement was assigned to the Athletics. The License Agreement expires by its terms in 1987.

The parties both desire to extend the License Agreement and amend it in certain respects. As the original document is

cumbersome in language and contains some concepts no longer relevant, both parties agree that the entire instrument should be redrafted. However, in order to permit both parties to act in reliance on the extension and amendment agreement, this Memorandum of Agreement is entered into, setting forth the essential new terms of the extension and amendment. Both parties will then proceed with deliberate speed to prepare and execute the restated License Agreement and all other documentation occasioned by this Memorandum.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. EXTENSION OF THE TERM.

The License agreement is hereby extended through December 31, 2000. This extension is subject to the provisions of paragraphs 7 and 12 of this Agreement. This extension supersedes the 1987 expiration date and four five-year option provisions under the present License.

2. CONCESSION REVENUE.

The Athletics revenue from parking and the sale of food and beverage in the Stadium

will be increased by adding the fixed sum of $1.5 million per season to the amount generated from the percentage of such revenue presently payable to the Athletics under the License. This increase will be in effect for the baseball seasons 1986-1990, after which time the increase will terminate; thereafter the Athletics will receive only the sum provided under the existing License. Payment of the increased revenues shall be made by crediting monthly the sum of $250,000 against the monthly charge for operating expenses otherwise reimburseable by the Athletics to the Coliseum under the License Agreement for April through September of each baseball season. Coliseum shall inform the Athletics of such credit by monthly memorandum.

. . .

4. PERCENTAGE RENT.

The rate of percentage rent of the Athletics increases based on attendance levels. As a consequence, many community programs which increase availability on the games to disabled persons, youth, the

elderly, or disadvantaged persons through reduced ticket prices have the effect of increasing the rate of percentage rent paid by the Athletics. To mitigate this problem, Coliseum agrees that discounted tickets will be counted towards attendance in the same proportion which their cost bears to the face value of such ticket. For example, a five dollar ticket sold at half-price will count as one-half person for purposes of calculating the rate of percentage rent. Tickets purchased from the A's Community Fund will not be counted in paid attendance at all for purposes of this calculation. The Athletics will provide Coliseum accurate records of such purposes.

5. SHORT TERM FINANCING.

The eventual goal of the parties is to develop methods for increasing and broadening the revenue base of the Athletics. To assist the Athletics during this transition, Coliseum agrees to lend the Athletics the sum of $15 million on a five year note, the proceeds of which will be used to refinance

existing debt and accounts payable obligations and fund deferred player liabilities. The principal sum will accrue interest at the rate of $1 million per year, and the sum of $20 million, including principal and all accrued interest will be due on or before 60 months from data of funding. The Note will be secured by a security interest in collateral acceptable to both parties, such as the Athletics partnership interest of Walter A. Haas, Jr. or the American League franchise of the Athletics, subject to Major League Baseball approvals. The Athletics must be notified of the precise terms and conditions of the loan on or before October 31, 1985, which terms must be substantially in accordance with the aforegoing.

. . .

14. CONCLUSION.

The philosophy of this document is to create a more productive working arrangement between Coliseum and the Athletics, all with a view to continuing the Oakland-Alameda County Coliseum as a first class sports and

entertainment facility.

In Witness Whereof, this agreement is executed the date first above written.

OAKLAND ALAMEDA COUNTY COLISEUM, INC.,
a non-profit corporation
By /s/ George J. Vukasin

OAKLAND ATHLETICS BASEBALL COMPANY,
a California Limited Partnership
By /s/ Walter Haas

Exhibit 8-JJJ (c)(1)

Oakland City Council Resolution No. 63970 C.M.S.

RESOLUTION AUTHORIZING A LOAN TO THE OAKLAND ATHLETICS FOR A TERM OF FIVE YEARS IN THE AMOUNT OF FIFTEEN MILLION DOLLARS

WHEREAS, in September 1985, the Oakland-Alameda County Coliseum Corporation ("Coliseum") and the Oakland A's entered into a Memorandum of Agreement (the "MOA") summarizing the terms on which public and private sector support would be marshalled to support the retention of the Oakland A's in Oakland; and

WHEREAS, one of the terms of the MOA called for the making of a $15 million loan to the Oakland A's by Coliseum; and

WHEREAS, the City of Oakland has agreed with Coliseum and the Oakland A's to provide the loan; and the City Manager and City Clerk are hereby authorized and directed to execute and deliver the loan agreement.

I certify that the foregoing is true and

correct copy of a resolution passed by the City Council of the City of Oakland, California on July 15, 1986.

S / Arrece Jameson

City Clerk

EXHIBIT 8-JJJ (a)

OFFICE OF THE ATTORNEY GENERAL

State of California

JOHN K. VAN DE KAMP

Attorney General

OPINION	:	No. 86-502
of	:	APRIL 1, 1987
JOHN K. VAN DE KAMP	:	
Attorney General	:	
CLAYTON P. ROCHE	:	
Deputy Attorney General	:	

THE HONORABLE RICHARD J. MOORE, COUNTY COUNSEL, ALAMEDA COUNTY, has requested an opinion on the following question:

Are meetings of the Board of Directors of the Oakland-Alameda Coliseum, Inc. subject to the open meeting requirements of the Ralph M. Brown Act, Government Code section 54950 et seq.?

CONCLUSION

Meetings of the Board of Directors of the Oakland-Alameda Coliseum, Inc. are

subject to the open meeting requirements of the Ralph M. Brown Act, Government Code section 54950, et seq.

ANALYSIS

The Ralph M. Brown Act, Government Code section 54950 et seq. requires that all meetings of "legislative bodies" of "local agencies" as defined in the act shall be open and public

unless excepted by the act or by some other confidentiality provision of the law. (See 54951-54953; Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs. (1968) 263 Cal.App.2d 41.) "Legislative body" as defined in the act is not restricted to the actual government body of a "local agency." Also "local agency" as defined in the act may include nongovernmental bodies.

This request for our opinion posits the question whether the Board of Directors of the Oakland-Alameda Coliseum, Inc. is subject to the open meeting requirements of the Ralph

M. Brown Act. The corporation is a California nonprofit corporation. Its board consists of private citizens, none of whom are appointed by any governmental officer or agency.

I. FACTUAL BACKGROUND

The Oakland-Alameda County Coliseum, Inc. was formed in 1961 by six private citizens under the then California General Non-profit corporation Law. its stated purposes were to acquire the necessary real property and to contract a multi-purpose public recreation coliseum and stadium in the City of Oakland, and to conduct the business affairs of such a complex so as to ultimately vest in the City of Oakland and the County of Alameda all the right, title and interest of the corporation in the Coliseum complex.

To effectuate these purposes the corporation entered into a master agreement with both the City of Oakland and the County of Alameda which provided in detail for the acquisition and construction of the Coliseum complex, the operation thereof by the

corporation, and the ultimate transfer of the complex to the city and the county. This agreement was entered into in the latter part of 1963.

The master agreement provided that the Coliseum should be constructed and financed through the medium of a class lease and lease-back such as have been approved in cases such as Dean v. Kuchel (1950) 35 Cal. 2d 244; City of Los Angeles v. Offner (1942) 19 Cal.2d 483 and County of Los Angeles v. Nesvig (1965) 231 Cal.App.2d 603.

Accordingly, the Coliseum, Inc. agreed to acquire at its own expense the real property on which the Coliseum complex was to be constructed and to convey it (including improvements to be made thereon) to the city and county.

In so concluding, we would point out that a body which has been delegated powers of a "legislative body" of a local agency pursuant to section 54952.2 will itself be a "legislative body" for purposes of the Ralph M. Brown Act only when meeting with respect

to the exercise of those delegated powers. Such delegation may be narrow or may be virtually all encompassing. We appear to be dealing with the latter form of delegation herein.

Conceivably, the Board of Directors of the Oakland-Alameda Coliseum, Inc. could meet for the sole purpose of discussing matters which do not fall within the scope of any delegation from the city or the county, for example, a discussion of purely corporate matters unrelated to the operation of the Coliseum complex. However, as a general proposition, it would seem that their meeting of necessity would normally r elate to their delegated powers.

Accordingly, we conclude that the meetings of the Board of Directors of the Oakland-Alameda Coliseum, Inc. are subject to the open meeting requirements of the Ralph M. Brown Act.

Supreme Court, U.S.
FILED
DEC 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87 - 779

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Appellant,

vs.

CITY OF OAKLAND,

Appellee,

On Appeal From the Circuit Court of Appeal for the Ninth Circuit

---

MOTION TO AFFIRM DECISION BELOW-INSUBSTANTIALITY

JAYNE W. WILLIAMS, City Attorney
JOYCE M. HICKS, Asst. City Attorney
THOMAS H. WEBBER, Asst. to the City Attorney
One City Hall Plaza, Fifth Floor
Oakland, California 94612
Telephone: (415) 273-3601

Attorneys for Appellee
CITY OF OAKLAND

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No. 87 - 779

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Appellant,

vs.

CITY OF OAKLAND,

Appellee,

MOTION TO AFFIRM DECISION BELOW-INSUBSTANTIALITY

Appellee, pursuant to Rule 16.1(d) of the Rules of the Supreme Court of the United States, moves that the final judgment and order of the Circuit Court of Appeals for the Ninth Circuit be affirmed on the ground that the decision of the Circuit Court is so obviously correct under the principles established by this Court in Goldblatt v. Town of Hempstead, 369 U.S. 590, (1962), as to warrant no further

review by this Court.

OPINION BELOW

This is an appeal from a decision of the Circuit Court of Appeals for the Ninth Circuit, rejecting Appellant's contention that the demolition of his two substandard structures denied him due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, and that the District Court judge was required to recuse himself from deciding the case.

JURISDICTION

Appellant cites 28 U.S.C. section 1254(2) as authority for this appeal, but misquotes the language of that provision. His Jurisdictional Statement states that an appeal may be taken under section 1254(2) "by a party relying on a State statute repugnant to the Constitution, or law of the United States." Section 1254(2) actually states that an appeal may be taken by a party "relying on a State statute held

by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States...." Appellant does not refer to any state statute which was held invalid on federal grounds by the Ninth Circuit. On the contrary, the Ninth Circuit upheld the application of Appellee's Housing Code against Appellant.

We, therefore, object to Appellant's claim that this Court has jurisdiction under section 1254(2), and pursuant to 28 U.S.C. section 2103, we treat this improvident appeal as a petition for writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the Constitution of the United States provides in Section 1 as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. section 455(a) states: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. section 455(b)(5)(i) states:

> "(B) He shall also disqualify himself in the following circumstances:
>
> (5) He or his spouse, or a person within the third degree of relationship to either of them or the spouse of each person:
>
> (i) Is a party to the proceeding or an officer, director, or trustee of a party."

STATEMENT OF CASE

I. Factual Background

Appellee takes issue with Appellant's Statement of the Case. The Statement fails to mention many important facts including the decisions of the lower federal courts leading up to the appeal. The Statement also is argumentative and appears to belong under the "Argument" section of the Jurisdictional Statement. Thus, Appellee respectfully submits the following statement:

Appellant owned two single, vacant homes in the City of Oakland. Appellee first began official action to abate the substandard conditions of the houses on April 16, 1975, when its Housing Advisory and Appeals Board declared both buildings substandard. No significant progress toward rehabilitation was made and on August 18, 1977, both buildings were declared public nuisance by the Appellee's Board. On August 8, 1979, Appellant

advised Appellee that he had purchased the property and would complete rehabilitation within 120 days.

On September 20, 1980, Mr. Thomas, Appellee's Supervising Housing Inspector, inspected Appellant's properties and found that Appellant was in the process of repairing one house and had obtained a building permit to repair both houses. The building permits were in effect for six months, and no evidence was shown of either renewal or reissuance of such permits. On October 2, 1980, Mr. Thomas noted substantial progress in the repair of one house, but observed that Appellant had completed only 40-50% of the work necessary to bring the building into compliance with Appellee's building code.

On July 25, 1984, the Appellee mailed letters to Appellant requesting a re-inspection. Appellant did not appear for the scheduled reinspection; thus the Appellee's staff began action to demolish

the buildings since substantial time had passed without significant work progress being shown. Further, an external inspection showed that the structures were still substandard. On October 4, 1984, Appellee's Housing Advisory and Appeals Board reaffirmed its finding that Appellant's structures were substandard and approved demolition.

In notices dated August 27, 1984 and October 26, 1984, Appellee gave Appellant 90 day notices regarding demolition of the substandard properties. Appellee then sent 60 day notices on October 26, 1984 and November 27, 1984, and 30 day notices on November 28, 1984 and January 7, 1985. Appellant then sought to appear before Appellee's Housing Advisory and Appeals Board and was placed on the agenda by Appellee's Housing Manager Julius Thomas. After consulting with Appellee's City Attorney, Mr. Thomas informed Appellant that he would be removed from the agenda.

He appeared at the Housing Advisory and Appeals Board meeting on February 7, 1985 requesting a stay of the demolition proceedings, but less than a quorum was present at the meeting, and they took no action.

On February 19, 1985, Appellant appeared before the City Council and obtained a one week stay of the demolition pending a report from the City staff on the condition of the buildings. Appellee again attempted to inspect the properties during the period of February 21 to February 26, 1985, but Appellant failed or refused to allow Appellee to inspect the properties. On February 26, 1985, the Appellee's City Council denied Appellant's request for an extension of time.

Appellee demolished Appellant's properties on March 19, 1985.

II. Litigation History

On February 4, 1985, Appellant filed his complaint for injunctive and declaratory relief and to abate or enjoin a

nuisance and for negligence, violation of civil rights and damages. He then filed a motion for temporary restraining order on February 13, 1985, which was denied by order dated March 18, 1985. On August 11, 1985, Appellee filed its Motion for Summary Judgment. Judge Vukasin's order, docketed on October 3, 1985, granted the Motion for Summary Judgment and dismissed the Doe defendants from the complaint.

Along with the motion for temporary restraining order, Appellant filed his motion for recusal requesting that District Court Judge John Vukasin recuse himself from the case. Appellant claimed that a conflict of interest arose because Judge Vukasin's brother, George Vukasin, is president of the Oakland Coliseum Board. By order dated April 24, 1985, Judge Vukasin denied Appellant's motion for recusal and refused to set aside the denial of Appellant's motion for temporary restraining order.

Appellant then appealed to the Ninth Circuit Court of Appeal challenging the dismissal of his complaint with prejudice and reasserting his claim that Judge Vukasin was required to have recused himself from the case. The Ninth Circuit affirmed the District Court's decisions by opinion dated March 10, 1987.

The Ninth Circuit found that Judge Vukasin's relation to George Vukasin did not raise a question of prejudice, because the Oakland Coliseum Board is independent from the Appellee City of Oakland and that George Vukasin's prior position on Oakland's City Council did not require recusal. Further, it held that Appellant received adequate due process and that Appellee followed proper procedure in demolishing his houses. It further found that Appellant failed to allege sufficient facts to support his Civil Rights claims. (Appellant's Appendix p. 4.)

ARGUMENT

I. Introduction

This is an attempted appeal from a decision of the Ninth Circuit (unpublished), affirming an order of the U.S. District Court for the Northern District of California which granted Appellee's Motion for Summary Judgment. The appellate jurisdiction of this Court does not extend to an action of this nature; Appellant asserts jurisdiction under section 1254(2) but fails to allege any state law held unconstitutional by the Court of Appeals. The decision below is appealable, if at all, only by a writ of certiorari under section 1254(1). Accordingly, the appeal should be dismissed and, treating the papers as an application for a writ of certiorari, the writ should be denied because of insubstantiality.

II. Appellant's Claim Of Recusal

Appellant's Motion for Recusal alleged that Judge Vukasin was required to recuse

himself because his brother, George Vukasin, serves as president of the Oakland Coliseum Board. Appellant asserted that Judge Vukasin is in violation of 28 U.S.C. section 455(a) and (b)(5)(i).

Federal Circuit Courts have applied an objective standard requiring "reasonable" grounds for recusal. See United States v. Conforte, 624 F.2d 869, 881 (9th Cir. 1980); In re United States, 666 F.2d 690, 695 (1st Cir. 1981); Hall v. Small Business Association, 695 F.2d 175, 179 (5th Cir. 1983); United States v. Norton, 700 F.2d 1072, 1076 (6th Cir. 1983) cert. denied, 461 U.S. 910 (1983); Union Carbide Corp. v. U.S. Cutting Services Inc., 782 F.2d 710, 715 (7th Cir. 1986); United States v. DeLuna, 763 F.2d 897, 907 (8th Cir. 1985).

Based on the judicial record, no objective observer could find reasonable grounds for requiring recusal of Judge Vukasin in this situation. The Oakland Coliseum Board was formed to assist the

Appellee in operating a stadium and a coliseum, but it is independent of Appellee. Appellant relied heavily on an opinion by John K. Van DeKamp, Attorney General for the State of California, concerning designation of the Board as a "legislative body." Oakland-Alameda Coliseum, Inc., 70 Ops. Cal. Atty. Gen. 57 (1987). That opinion concerned the State of California's open meeting requirements, and nothing in that opinion states that the Board is part of the Appellee. Likewise, Mr. Vukasin's position on the Board did not make him an officer, director or trustee of the City of Oakland under section 455(b). Appellant has not raised any case law holding that a relative's prior connection with a party would give rise to grounds for recusal. Mr. Vukasin's prior position on the Oakland City Council did not require Judge Vukasin to recuse himself.

Appellant further accused Judge Vukasin of being biased because of an

alleged prejudice against black people. Appellant's accusations were completely unfounded and unsupported by any facts showing past incidents of racial prejudice. An allegation of this type must be supported by a factual basis, and those facts must be judged on a reasonableness standard. In Re United States, 666 F.2d at 695. Appellant did no more than make broad, sweeping allegations which were unsupported by the record. Accordingly any charge of racial prejudice was a blind accusation which did not require recusal of Judge Vukasin.

III. Appellant's Civil Rights Claims Lack Factual Support

Appellant raises a number of civil rights claims which were not supported by any facts showing deprivation of his civil rights. 42 U.S.C. sections 1981 and 1982 relate to racial discrimination. White v. Washington Public Power Supply System, 692 F.2d 1286, 1290 (9th Cir. 1981),

Agnew v. Compton, 239 F.2d 226, 230 (9th Cir. 1957). Appellant has failed to state any facts in his Jurisdictional Statement showing any kind of racial discrimination as proscribed by these sections. Most of his allegations raise issues of notice and hearing, without claiming that the City of Oakland acted in a racially discriminatory manner.

Appellant's claims under 42 U.S.C. 1985 also were not supported by the facts. Section 1985(1) is not applicable, because Appellant did not claim any conspiracy by the City of Oakland to prevent him from holding office with the United States. Further, section 1985(2) does not apply, because Appellant did not claim any obstruction of justice. Finally, under section 1985(3), no facts were stated to support the allegation of conspiracy to deprive Appellant's civil rights. Under this section, a claimant must make specific allegations of class-based discrimination.

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The record reflects that Appellant failed to make such a showing. Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

Appellant's arbitrary reference to 42 U.S.C. section 2000 in his sweeping assertion of constitutional violations lacked any factual basis showing violations under its sections. Appellant did not claim any unlawful employment practice, making section 2000(e) inapplicable. No facts supported a claim under section 2000(a) because Appellant did not assert any deprivation of his equal enjoyment of public accommodations. Further, Appellant did not allege any facts under section 2000(a)(1) showing that the Appellee's Housing Code required Appellee to discriminate on the basis of race, religion or national origin. Finally, Appellant's reference to section 2000(d), regarding discrimination against individuals in denying federal financial assistance, lacked any supporting facts showing dis-

criminatory denial of funds.

IV. Appellant's Due Process Claims Are Without Merit

The legal principles which govern the power of a city to enact laws protecting the public 's health and safety have been well established by this court and the federal courts. This Court has deferred to the legislature in enacting ordinances to protect the public's safety. Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1946). Such exercise of a city's police power will be tested against a reasonableness standard. Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

In Saxl, this Court deferred to the judgment of the legislature in the area of public safety and upheld a city law requiring installation of sprinkler systems in certain lodgehouses. This Court stated, "We are not concerned with the wisdom of the legislation or the need for it....Protection of the safety of persons is one of

EDITOR'S NOTE

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the traditional uses of the police power of the States." Saxl, 328 U.S. at 82.

Goldblatt also concerned a town ordinance enacted pursuant to the town's police power to regulate uses of property which may endanger public safety. In Goldblatt, this Court upheld a town ordinance prohibiting pit excavation below a certain water level and found that no "taking" of property would arise by enforcement of the ordinance. Although the appellant alleged that the ordinance prohibited the beneficial use of his property, this Court stated:

> "The present case must be governed by principles that do not involve the power of eminent domain, in the exercise of which property may not be taken for public use without compensation. A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public

> benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests....The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals, or the safety of the public, is not -- and, consistently with the existence and safety of organized society, cannot be - burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community."
>
> Goldblatt, 369 U.S. at 593, quoting Mugler v. Kansas, 123 U.S. 623, 668-669 (1887).

Appellee's Housing Code is similarly applied to protect the health and safety of the public and prevents the maintenance of housing structures in substandard condition. Enforcement of the Housing Code against substandard housing is a proper

exercise of police power. As Goldblatt states, no taking of property arises when a state enforces legislation preventing use of property for purposes that are injurious to the health, morals or safety of the public. The demolition of Appellant's property resulted from his failure to correct conditions on his property rendering it substandard, not from any "taking" by Appellee. Appellee acted within its police powers to declare Appellant's houses substandard and in ordering their demolition after Appellant failed to prove completion of required repairs.

Whether the exercise of police power is valid in a particular case is determined by the "reasonableness" of the provision. Goldblatt, infra; Lawton v. Steele, 152 U.S. 133, (1984); Trieqle v. Acme Homestead Association, 297 U.S. 189, (1935). The general statement regarding the test applied to determine the validity of a city's action is as follows: "To justify

the State...interposing its authority in behalf of the public it must appear, first, that the interests of the public...require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." Goldblatt, 369 U.S. at 594-595, quoting Lawton v. Steele, 152 U.S. 133, 137 (1894). In Goldblatt, this Court enumerated some factors useful in evaluating the reasonableness of the alleged deprivatory action, including the nature of the menace against which it will protect, the availability and effectiveness of other less drastic protective steps, and the loss which appellants will suffer. Goldblatt, 369 U.S. at 595. This Court found that the record was insufficient and indecisive on the issue of reasonableness, and therefore upheld the ordinance due to appellant's failure to rebut the presumption of Constitutional validity.

Likewise, Appellee's demolition of Appellant's substandard properties was a reasonable exercise of police power. The public has an interest in safe and sanitary housing and in properly maintained structures in the community. Further, demolition provided a reasonable and proper means of abating substandard premises which the owner had failed or refused to repair. Here, Appellant was afforded five years time and ample opportunity to prove that he had accomplished the required repairs. He continually asserts that he completed work on his houses, but he both failed and refused to allow Appellee to enter his homes for inspection. The letter from the Housing Manager Julius Thomas noted that Appellant had made some repairs in 1980, but stated that repairs needed to continue at the same rate of progress otherwise the demolition process would no longer be held in abeyance. Appellee acted in accordance with its Housing Code in proceeding with

demolition and providing notice of demolition before proceeding. Even the week before the scheduled demolition, Appellee, by order of its City Council, stayed the planned demolition for one week to allow Appellant one more opportunity to prove he made the necessary repairs. He failed and refused to appear for that inspection, prompting Appellee to proceed with demolition.

Even considering the Goldblatt factors, the balance weighs in Appellee's favor. Appellee has a substantial interest in the health and safety of the public. As to less drastic means of accomplishing this purpose, Appellee provided in its Housing Code section H-305 that the Housing Advisory and Appeals Board would authorize demolition if the owner failed to abate the nuisance within the time required. In this case, Appellee delayed the proceedings well beyond the time required. In this case, Appellee delayed the proceedings well

beyond the time of 120 days originally granted to Appellant. Demolition was ordered only after attempts to inspect the property and determine its condition failed, and an external inspection showed its substandard and public nuisance condition.

Appellant complained of monetary losses suffered by him as a result of the demolition. In examining Appellant's alleged loss, the courts below were aware that these properties were declared substandard. Accordingly, Appellant had constructive notice of the condition of the properties from the recorded notice of substandard, and he had actual notice from his conversations with Appellee's Housing Manager Julius Thomas. The record reflects that Appellant bought the property knowing that the structures were in violation of the Housing Code. The losses he claims were measured with these factors in mind.

Any loss suffered by Appellant was

caused by his own failure to abate the public nuisance created by his structures. Further, he has not been denied the use of his property, but only the maintenance of his substandard structures.

Finally, the presumption of constitutional validity was not rebutted by Appellant's arguments. The exercise of police power is presumed to be valid, and the burden of proving that demolition was unreasonable rested with Appellant. Goldblatt, 369 U.S. at 596; Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 529 (1959). Appellant made general accusations that the demolition of his property was arbitrary and resulted in a taking, but he failed to assert facts showing such denial and overcoming the presumption. He had all the process that was due and the opportunity to make repairs and allow inspections, but he failed or refused to take advantage of the opportunity.

V. Appellant's Cases Distinguished

Appellant cited a number of important decisions by this Court regarding regulatory takings of property in violation of the Due Process Clause of the Fourteenth Amendment. However, as will be discussed, these cases are distinguishable on their facts.

In Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), this Court found that a taking of property arose under a city statute prohibiting the mining of coal underneath buildings or dwellings used by people if subsidence would result. This Court weighed the limited public interest involved in that case against the subsurface rights owner's almost complete loss of profitable business. Considering "extent of diminution" of property value as a factor, it found that a taking had occurred.

Recently, this Court considered a similar statute regulating coal mine

operations in Keystone Bituminous Coal Association v. DeBenedictis, 107 S.Ct. 1232 (1987). This Court found that the statute, which required coal mine operators to leave a certain amount of coal for ground support and to pay for and repair any subsidence damage, differed from the statute on Mahon. First, this Court stressed that the statute was enacted to protect the public interest in "health, the environment, and fiscal integrity of the area," and not merely to benefit private parties. DeBenedictis, 107 S.Ct. at 1242-1243. Second, this Court stated that the petitioners failed to claim that the statute made it commercially impracticable for them to continue mining coal, and that the petitioner failed to overcome the heavy burden of proving the statute resulted in a regulatory taking. Distinguishing Mahon, this Court upheld the statute against Petitioner's challenge under the takings clause.

The case at hand also involves a city law supported by a similarly important public purpose. Appellee was concerned with the danger to public safety created by substandard structures, such as fire hazards, crime and juvenile delinquency, and general unsanitary conditions. Saxl, supra; Kovacs v. Cooper, 336 U.S. 77 (1948), California Reduction Co. v. Sanitary Reduction Works of San Francisco, 199 U.S. 306 (1906). Appellee enacted its Housing Code to protect not only the residents of the structure, but also the residents in the surrounding neighborhood and fire and safety workers.

Accordingly, although demolition resulted in Appellant losing his business, it was his failure or refusal to prove he had made reasonable repairs that cost him his business. Here, Appellant was given ample time to repair his property and prevent any loss of his business. However, he refused. He has not lost his rights to

the property, or to use the property as he chooses, so long as he operates the property in a safe and sanitary condition. Like any property owner, Appellant's activities were not immune from reasonable government regulation. Saxl, 328 U.S. at 83.

The other cases Appellant cites are readily distinguishable. Dobbins v. City of Los Angeles, 195 U.S. 223 (1904), involved a city law preventing a land owner from constructing gas works on her property. A crucial finding in that case was that the city acted in an arbitrary and discriminatory manner when it initially granted her a permit to erect the work and then later prohibited the activity in that district. There is no similiar showing in this case that Appellee prohibited a previously lawful act, or any lawful act. Appellant's property was determined to be substandard from the outset and Appellant was never given permission to operate a

substandard housing structure.

Nollan v. California Coastal Commission, 107 S.Ct. 3141 (1987) involved an attempt by the state to gain an easement over a property owner's property by placing a condition on a rebuilding permit sought by owner. Appellant has not alleged any issuance of a rebuilding permit by Appellee with a condition creating an easement over Appellant's property. Nollan is not controlling in this case.

Finally, Appellant cites First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 55 U.S.L.W. 4781 (U.S. June 9, 1987) (No. 85-1199), as authority supporting his assertion that Appellee denied Appellant the right to develop his structures. That case involved a county ordinance preventing the Appellant from building any structures in the area, and this Court addressed the issue of whether compensation was required in a "temporary" regulatory taking. In this

case, Appellee's Housing Code did not involve the deprivation of any use of Appellant's land. Rather, Appellee regulated uses of the property which the City determined to be against public health and safety. No governmental taking arose here, but only the exercise of police power to remedy an unlawful use of property which persisted for many years.

CONCLUSION

Appellee respectfully prays that this Court uphold the decision of the Ninth Circuit and deny Appellant's appeal on the grounds of insubstantiality.

DATED: December 7, 1987

Respectfully submitted,

JAYNE W. WILLIAMS, City Attorney
JOYCE M. HICKS, Asst. City Attorney
THOMAS H. WEBBER, Asst. to the City Attorney

By: _____
Attorneys for Appellee
CITY OF OAKLAND

Supreme Court, U.S.
FILED
DEC 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 87 - 779

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Appellant,

vs.

CITY OF OAKLAND,

Appellee,

APPENDIX TO MOTION

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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APPENDIX TO MOTION

CITY OF OAKLAND HOUSING CODE

CHAPTER 2 - ENFORCEMENT

Sec. H-201. (a) Authority. The Housing Division Official is hereby authorized and directed to administer and enforce all of the provisions of this Code.

(b) Inspection and Right of Entry. Whenever the Housing Division Official shall have cause to suspect that conditions which do not conform to this Code exist in a particular residential building or premises, or whenever the Housing Division Official authorizes and directs the inspection of all residential buildings or premises subject to the provisions of this Code in a defined area of the City of Oakland, or whenever said Housing Division Official shall authorize and direct inspections of residential buildings or premises as a part of a routine spot check, duly authorized representatives of the Housing Department of the City of Oakland may enter and inspect any such residential building or premises to secure compliance with, or prevent a violation of, any provision of this Code.

No premises shall be inspected until a reasonable notice is given to the owner or occupant, or to the agent of either.

The owner or authorized agent of the owner of any residential building or premises may enter the building or premises whenever necessary to carry out any instructions or perform any work required to be done pursuant to this Code.

No person authorized by this section to enter and inspect any building or

premises shall enter any dwelling unit between the hours of 5:00 p.m. of any day and 8:30 a.m. of the succeeding day without the consent of the owner or of the occupants of the dwelling unit nor enter any dwelling unit in the absence of the occupants, except when the structure is in such condition as to place in jeopardy the life, limb, or morals of the public, in which case entry may be made at any time.

If the owner or occupant shall refuse or delay to open said residential building or premises to said duly authorized representative, and admit a free examination thereof, he shall be guilty of an infraction.

(c) Responsibilities Defined. Every owner remains liable for violations of duties imposed upon him by this code even though an obligation is also imposed on the occupants of his building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this Code.

Every owner, or his agent, in addition to being responsible for maintaining his building in a sound structural condition, shall be responsible for keeping that part of the building or premises which he occupies or controls in a clean, sanitary, and safe condition including the shared or public areas in a building containing two or more dwelling units.

Every owner shall, where required by this Code, the health ordinance or the Health Officer, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment, or facilities for the prevention of insect and rodent infestation, and where infestation has taken place, shall be responsible for the extermination of any insects, rodents, or

other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.

Every occupant of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary, and safe condition that part of the dwelling or dwelling unit or premises which he occupies and controls, shall dispose of all his rubbish, garbage, and other organic waste in manner required by the health ordinance and approved by the Health Officer.

Every occupant shall, where required by this Code, the health ordinance or the Health Officer, furnish and maintain approved devices, equipment or facilities necessary to keep his premises safe and sanitary.

CHAPTER 3

ENFORCEMENT-VIOLATIONS-RESPONSIBILITY

Sec. H-301. General. Whenever the Housing Division Official determines by inspection that an existing residential building or buildings or structure accessory thereto, has become substandard or unsafe, or that any building or structure is unsafe, he shall institute proceedings to cause the repair or rehabilitation of the building, or if such repairs or rehabilitation are impracticable, then he shall order the building immediately vacated and demolished in the manner hereinafter provided.

Sec. H-302. Notification. Order to Comply or Show Cause. Hearing. Right of Lienholders. Limitation or Right to Apply to Court. The Housing Division Official shall give official notice in writing to the owner of a substandard residential building, or an unsafe building, or to any person in control of the building, specify-

ing the inadequacies and hazards contained herein. He shall in said official notice fix the time and place of hearing before the Housing Advisory and Appeals Board where said owner, or person in control, may show cause, if any he has, why said building should not be declared a substandard residential building, or an unsafe building. Said notice shall further advise said property owner, or person in control, that if he does not so appear and show cause, said structure shall be declared a substandard residential building or unsafe building. Said official notice shall likewise be given to any mortgagee or beneficiary under any deed of trust or record. Said notice to said owner or person in control, and to any mortgagee or beneficiary under a deed of trust of record shall be given as hereinafter set forth.

The Housing Advisory and Appeals Board at the time and place fixed for such hearing shall hear said matter and shall:

1. Find, determine and declare that said building is, in fact, a substandard residential building, an unsafe building, or both; and thereupon determine what, if any, of the specified inadequacies or hazards which render the building a substandard residential building or unsafe building must be corrected or abated to render said building standard and safe; or

2. Find and determine that said building is neither a substandard residential building nor an unsafe building. Said hearing shall be conducted pursuant to the rules and regulations of the Board.

The Housing Advisory and Appeals Board shall render its decision in writing and shall give official notice thereof to all interested persons appearing at said hearing. A copy of a decision declaring a building substandard or unsafe shall be

posted upon said building.

If the Housing Advisory and Appeals Board finds and determines that said building is a substandard residential building or unsafe building, it shall include in its aforementioned notice of decision an order to correct or abate all of the conditions rendering the building substandard or unsafe by the closing or repair of said building within thirty (30) days after the date of the mailing and posting of such notice of its said decision. If such building is encumbered by a mortgage or deed of trust or record and the owner, or person in control of the building, has not complied with the order of said Housing Advisory and Appeals Board within a period of thirty (30) days after the mailing and posting of said notice of decision, the mortgagee or beneficiary under such deed of trust may, within a period of fifteen (15) days after the expiration of said thirty-day period, comply with the requirements of the decision of said Board, in which event the cost to such mortgagee or beneficiary shall be added to and become a part of the lien secured by said mortgage or deed of trust and shall be payable at the same time and in the same manner as may be prescribed in said mortgage or deed of trust for the payment of any taxes advanced or paid by said mortgage or beneficiary for and on behalf of said owner.

Any owner or other interested person having any objection or feeling aggrieved at any proceedings taken by the Housing Division Official, or the Housing Advisory and Appeals Board, must bring an action in a court of competent jurisdiction within ten (10) days after the posting of the decision of said Board, upon said building, otherwise all objections will be deemed to have been waived.

If the decision of said Board shall not have been complied with on or before the expiration of forty-five (45) days after the mailing and posting of the notice of said decision the Housing Division Official shall order the building immediately vacated and may institute appropriate action or proceedings to correct or abate the conditions. Disobedience of said order of said Housing Division Official to vacate said premises shall constitute a separate infraction for each and every day said violation shall continue. In addition to the punishment provided by law, the person found guilty of violating said order to vacate shall be liable for all costs, expense, and disbursements paid or incurred by the Housing Division Official in the prosecution of the violation as shall be fixed by the court in which the violation is prosecuted.

Sec. H-304.(a) Any commercial or residential parcel, lot, building or structure which is not kept clean, sanitary and free from all accumulation of weeds, rank growth, rubbish, garbage or debris so as to constitute a potential fire or health hazard shall constitute a public nuisance and shall be ordered cleaned by the issuance of a Notice to Abate in accordance with Section H-303 of this Code.

Any such parcel, lot, building, or structure which remains uncleaned of said offensive materials heretofore described after a period of ten (10) days from the issuance of said Notice to Abate shall then be ordered cleared and abated by any appropriate means upon written notice of the Housing Division Official. Any charges therefore shall become a charge against the City in accordance with Sections H-307 and H-308 of this Code.

(b) Any commercially or residentially zoned

parcel, lot or premise on which recyclable materials as defined by this Code are openly stored, causing blight or hazardous conditions, so as to constitute a potential fire or health hazard shall constitute a public nuisance and shall be ordered cleaned by the issuance of a Notice to Abate in accordance with Section H-303 of this Code.

If, after proper notice to remove the offensive material is given and the ten (10) day period in which to comply or appeal has passed, the Housing Division Official may order the premises cleaned in accordance with procedures set forth in Sections H-307 and H-308 of this Code.

Sec. H-305. Demolition Procedure. Whenever the Housing Division Official shall order an unsafe building or a substandard residential building demolished, he shall commence proceedings before the Housing Advisory and Appeals Board to abate said building as a public nuisance, and said Board shall properly notice and set the matter for hearing and decision, in accordance with the Rules of Procedure of the Board. If the Board shall find and decide said building is a public nuisance and shall order its demolition, and if said nuisance has not been abated by the owner thereof, or other interested party, within the time provided therefor, then the Board shall authorize and direct the Housing Division Official to raze and demolish said building by such means as he deems appropriate, and shall cause the work to be performed in connection therewith in accordance with public works practices. The Board shall have the power and duty to implement the demolition procedure set forth generally herein by the promulgation of specific rules and regulations.

Sec. H-306. Standard for Demolition. The following standards shall be followed

by the Board in determining whether an unsafe building or a substandard residential building shall be demolished:

1. If an unsafe building or substandard residential building is in such condition as to make it dangerous to the health, morals, safety or general welfare of the neighborhood wherein it is located, it shall be demolished; or

2. If the unsafe building or substandard residential building is a public nuisance as defined in the Civil Code of the State of California it shall be demolished; or

3. If the unsafe building or substandard residential building is a fire hazard it shall be demolished; or

4. If the unsafe building or substandard residential building cannot reasonably be repaired or rehabilitated so that it shall no longer exist in violation of the law, it shall be demolished.

Sec. H-307. Cost a Charge Against the City. Statement of Costs. Collection of Costs. The cost incurred in obtaining Real Property Ownership Reports and in razing or demolishing said building or securing or cleaning said parcel by action of the Housing Division Official shall be a proper charge against the City Treasurer and shall be paid therefrom. Reinspection fees to ascertain Code compliance for overdue abatement of previously noticed or cited violations shall be charged against the owner. Fees shall be in the amount as currently described in the Master Fee Schedule. The Housing Division Official shall give the owner or other interested party of such premises a written notice showing the itemized cost of such abatement, and requesting payment thereof.

Supreme Court, U.S.
FILED
JAN 3 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-779

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Appellant,

vs.

CITY OF OAKLAND, et al.,

Appellee,

Supplement To

Opposition to Motion to Affirm
Decision Below - In Substantiality

Raymond Dobard
Appellant, in pro per
not represented by
counsel
1866 Alcatraz Avenue
Berkeley, California
94703, (415) 658-5344

January 3, 1988

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To: Honorable Thurgood Marshall, Associate Justice of the Supreme Court of the United States.

On January 2, 1988, appellant mailed his brief in opposition to appellee's motion to affirm the decision below - insubstantiality by United States "Express Mail" that contained the following inadvertent minor errors that are now being corrected: (1) On the yellow outside cover, and on page 15, it avers to the date of January 2, 1987, that should have been January 2, 1988; (2) Tables of contents and authorities were omitted and are now being presented and consolidated for the January 2 brief; (3) Appellant's response to the additional conclusions of appellee that were previously objected to in the January 2nd brief are now being responded to by appellant in this supplemental January 3, 1988 Brief.

///

APPELLANT RESPONSES TO APPELLEE'S CONTENTIONS OF APPELLANT'S FAILURE TO MAKE REPAIRS, OR ALLOW INSPECTION

The gravamen of appellee's motion refers to appellant failing to make repair to eliminate nuisance or allow inspection of property. Appellant refutes this by his Exhibit "C" and "C-1" on pages 65-76 and page 6 of appellee's motion that clearly state that housing inspector Mr. Thomas, on Sept. 9/30/80, 1980 and Oct. 2, 1980, inspected appellant's properties for repairs and noted substantial progress. These inspections by housing inspector Mr. Thomas contradict and refute appellee's contention of failure of appellant to allow inspections on premises as stated on pages 6, 23, and 24 of its motion, that avers i.e. "Demolition was ordered only after attempts to inspect the property and determine its condition failed. Appellant further points out to this Court that this statement and reason given by appellee for demolition of appellant's properties due to "failure to inspect," contradicts all of the intentional perversion of fact that appellee

previously testified to in the District Court and the court below whereas it stated that appellant's properties were demolished due to its public nuisance conditions.

Appellant points out that failure to inspect is not a standard for demolition, as reflected in the Oakland Housing Code Ordinance section H-306, Standards for Demolition (see pp. 7-8 of appellee's (unnumbered) appendix).

Referring to Demolition Procedures, section H-305, the Housing Advisory and Appeals Board made no constitutional ("due process") determination or findings relative to updated and existing public nuisance conditions at the resolution hearings of September 6 and October 4, 1984. These unconstitutional hearings were being held in violation of OHC §H-303, without verified notice to appellant for granting him his constitutional right to be heard and to refute the (suppressed) public nuisance allegations. Appellant further states that no verified judicial determination was made or

presented in court, except "hearsay," relative to an existing and updated determination of public nuisance. There was no verified documented evidence shown or presented to the court in compliance with the Demolition Procedures of OHC §H-306, Standard for Demolition (pp. 7-8 of appellee's appendix).

APPELLANT'S OPPOSITION TO APPELLEE'S RECUSAL ALLEGATIONS

Appellant refers this Honorable Court to pages 16-19 of his (amended) appendices to Jurisdictional Statement dated 11-1-87 reflecting (i) Motion to Disqualify Hon. Judge J. P. Vukasin, Jr., dated Feb. 11, 1985, pursuant to 28 USCS 455(a) and (ii) Affidavit of Prejudice to Disqualify Judge, also dated Feb. 11, 1985. Appellee evasively failed to address this disqualification motion on pages 8 and 9 of its motion, in referring to Litigation History. The court below rendered an erroneous conclusion that Judge Vukasin's brother, Mr. George Vukasin was completely independent of appellee. Both appellant Dobard and the judgment and opinion of

California Attorney General John K. Van de Kamp disagree with conclusions below for the following reasons (see pp. 94-98 of appellant's appendices); opinion and judgment No. 86-502 finding Mr. George Vukasin and his coliseum board (p. 97) to be a body which has been delegated powers of a "legislative body" of a local agency (City of Oakland) pursuant to section 54952.2 will itself be a "legislative body." Appellant further points to pages 86-91 of his appendices to the memorandum of agreement signed by Mr. George Vukasin making a $15 million loan of public taxpayers' funds of the City of Oakland to the Oakland Athletics Baseball Club. This refutes appellee's erroneous contentions, on page 13 of its motion, regarding its designation of Mr. George Vukasin and his board being a legislative body of the City "only" pertaining to California open meetings. Appellant states that a legislative body of a local agency, no matter what designation is being applied, is still a legislative body of that local agency (City

of Oakland) conducting its business affairs and thus Mr. George Vukasin is construed to be having his foundation in public policy. Appellant further states that appellee intentionally failed to contravene the $15,000,000 loan made by Mr. Vukasin. Therefore, 28 USC sec. 455 (a) and (b)(5)(i) are applicable and recusal was required.

CONCLUSION

Appellant prays that this Honorable Court deny appellee's motion to affirm - insubstantiality and reverse the affirmation below and grant judgment to appellant and cast appellee with all costs of appeal.

Dated: January 3, 1988

Respectfully Submitted,

Raymond Dobard,
Appellant-Plaintiff in Pro Per and not represented by counsel